

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-6006

In The
United States Court of Appeals
For The Second Circuit

B

R. L. BLACK, ADA SMITH, JAMES BURKS, BEATRICE BURKS, SHANNON BAIRD, SHARON BAIRD, ALVIN BLACK, MARSHA BLACK, FURMAN G. RENTZ, MIGNONNE RENTZ, VINCENT SANFORD, ETHELINE SANFORD, LEE E. SIMIEN, LESLIE SMALL, SOLLA SMALL, ROY T. BLACK, GERTRUDE BLACK, NATHANIEL MONTGOMERY, TOMMIE MONTGOMERY, J. V. BLACK, GENNIE BLACK, on behalf of themselves and on behalf of all others similarly situated,

P15

Appellants,

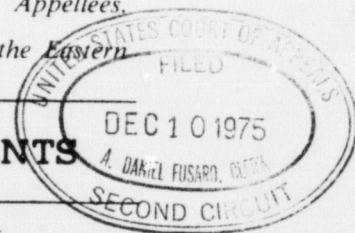
vs.

UNITED STATES OF AMERICA, WILLIAM E. SIMON, Secretary of the Treasury, DONALD ALEXANDER, Commissioner, Internal Revenue Service, CHARLES BRENNAN, District Director, Internal Revenue Service, Brooklyn District, and other unknown agents of the Internal Revenue Service,

Appellees.

Appeal from the United States District Court for the Eastern District of New York

APPENDIX FOR APPELLANTS



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(8993)

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3

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	Page
Docket Entries	A
Complaint (Filed July 10, 1974)	1a
Exhibits Annexed to Foregoing Complaint:	
A — Letter From IRS to R.L. Black Dated June 26, 1974	15a
B — Representative Letter From IRS . . .	17a
Amendment As of Right (Filed September 19, 1974)	19a
Notice of Motion For a Preliminary Injunction (Filed October 1, 1974)	21a
Motion For Preliminary Injunction (Filed October 1, 1974)	22a
Memorandum in Support of Plaintiffs' and Their Class' Motion For a Preliminary Injunction (Filed October 1, 1974) . . .	23a
Exhibits Annexed to Foregoing Memorandum:	
A — Summons to Ada Smith	33a
B — Summons to Mr. & Mrs. Shannon Baird	34a

Contents

	Page
C — Summons to Furman and Mignonne Rentz	35a
D — Affidavit of Furman G. Rentz . . .	36a
E — Affidavit of Shannon Baird	38a
F — Affidavit of Lee E. Simien	40a
G — Affidavit of Hattie Little	43a
H — Affidavit of Tommie Samuel	45a
I — Affidavit of Bertha Davis	47a
J — Affidavit of James Burks	49a
K — Affidavit of Ada Smith	51a
L — Affidavit of Frances Campbell . .	54a
M — Affidavit of Paul Burke	56a
N — Affidavit of R.L. Black	58a
O — Card of Frank M. Perniola	61a
P — Letter From IRS to R.L. Black . .	62a

iii
Contents

	Page
Notice of Motion	64a
Motion to Dismiss Original Complaint and Amended Complaint	65a
Memorandum in Support of Motion to Dis- miss	66a
Memorandum in Opposition to Defendants' Motion to Dismiss (Filed October 22, 1974)	71a
Anti-Injunction Statute, 26 U.S.C. §7421 . .	78a
Memorandum and Order (Filed February 10, 1975)	79a
Notice of Appeal (Filed March 6, 1975) . .	90a
Certificate of Service	91a

1007

DOCKET

APPEAL

NEAHER, J. TRAVIA, J.

TITLE OF CASE

ATTORNEYS

R. L. BLACK, ADA SMITH, JAMES BURKS, BEATRICE :
 BURKS, SHANNON BAIRD, SHARON BAIRD, ALVIN :
 BLACK, MARSHA BLACK, FURMAN G. RENTZ, :
 MIGNONNE RENTZ, VINCENT SANFORD, :
 ETHELINE SANFORD, LEE E. SIMIEN, LESLIE :
 SMALL, SOLLA SMALL, ROY T. BLACK, GERTRUDE :
 BLACK, NATHANIEL MONTGOMERY, TOMMIE :
 MONTGOMERY, J. V. BLACK, GENNIE BLACK, :
 on behalf of themselves and on behalf of all others :
 similarly situated, :

Plaintiffs,

vs.

UNITED STATES OF AMERICA, WILLIAM E. :
 SIMON, Secretary of the Treasury, DONALD :
 ALEXANDER, Commissioner, Internal Revenue :
 Service, CHARLES BRENNAN, District Director, :
 Internal Revenue Service, Brooklyn, District, :
 and other unknown agents of the Internal Revenue :
 Service, :

Defendants.

For Plaintiffs Thomas Hoffmar

200 W. 57th St.- N.Y., N.

10019 581-1180

For Defendant:

IT'S ACCOUNT

RECEIVED

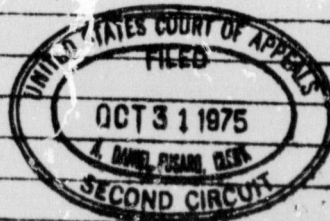
DISBURSED

ABSTRACT OF COSTS

TO WHOM DUE

AMOUNT

RECEIPTS, REMARKS, ETC.



R.L. BLACK, ET. AL. VS U.S.A. ET. AL.

FILING6--PROCEEDINGS

AMOUNT
REPORTED
EMOLUME
JANUARY

10-74	Complaint filed- Summons Issued	1
7/16/74	Summons ret'd and filed. Executed.	2
9-10-74	By TRAVIA, J - Order dtd 9-10-74 extending time to answer the complaint to 10-10-74 filed.	3
9/19/74	Amendment as of Right filed.	4
10-1-74	Notice of motion with annexed memorandum of law to amend complaint, ret 10-25-74 at 10 A.M. filed.	5
10-1-74	Notice of motion with annexed memorandum of law for a preliminary injunction against defts, ret 10-25-74 at 9:30 A.M. filed	6
10/22/74	Memorandum in Opposition to deft's motion to dismiss filed.	7
10-25-74	Before TRAVIA, J.-Case called and adjourned to November 8, 1974.	
11-8-74	Before TRAVIA, J. Case called & referred to Judge Neaher.	
11/11/74	Before NEAHER, J.- Case called- Hearing held and concluded- Court reserved decision.	
2-10-75	By NEAHER, J. - Memorandum and order dtd 2-7-75 directing Clerk to enter judgment dismissing complaint as amended filed. (copies mailed to attys).	8
2/11/75	JUDGMENT dated 2/11/75 filed that the plttf take nothing of the deft and the complaint as amended as dismissed. P.C. mailed to the attys.	9
3-4-75	Notice of appeal filed. Copy sent to C of A, JN	10
10-20-75	Above record certified and mailed to C of A.	

A TRUE COPY
 October 30, 1855
 John Doyle
 William L. ...

1a

-----X

74C 1007

COMPLAINT

X

as Hoffman

...H. K. ...

njunctive

Conjunctive

which are violative

Revenue Code.

— 41 —

Amendments

JURISDICTION

2. That jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331, 1340, 1343(4), 1346, 1361, 2201 and 2202, and 42 U.S.C. §1981. This suit is brought pursuant to the Internal Revenue Code and the Federal Tax Regulations, which set forth the procedures governing the conduct of Internal Revenue Service agents in investigating the tax returns and liabilities of citizens; 42 U.S.C. §1981, which guarantees to black persons the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and to be subject to the same punishment, pains, penalties, fines, licenses and exactions; the Federal Tort Claims Act, 28 U.S.C. §§2671 to 2680, which renders the United States liable for torts committed by government agents and employees; the Fourth Amendment to the United States Constitution, protecting the rights of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures; the Fifth Amendment of the United States Constitution prohibiting the deprivation of life, liberty and property without due process of law, guaranteeing all citizens equal protection of the law, and preventing the taking of private property by the government without just compensation and the Ninth Amendment to the United States Constitution guaranteeing all citizens the right of privacy from unwarranted government intrusion. The amount in controversy in this action exceeds ten thousand dollars (\$10,000).

PARTIES

3. Plaintiff R. L. Black is a black citizen of the United States and of the State of New York. Plaintiff R.L. Black is the owner and sole proprietor of R. L. Black Income Tax Service, a business in which

plaintiff R. L. Black prepares income tax returns and performs other income tax services for the public. Plaintiff R. L. Black has been engaged in this business since 1971 and has approximately five hundred sixty (560) clients. Plaintiff R. L. Black's business is located at 201-10 Linden Boulevard, St. Albans, New York.

4. Plaintiff Ada Smith is a black citizen of the United States and the State of New York. Plaintiff Ada Smith is a client of plaintiff R. L. Black and plaintiff R. L. Black prepared her federal income tax returns for the years 1971, 1972, and 1973. Plaintiff Ada Smith presently resides at 71-15 Beach Channel Drive, Queens, New York.

5. Plaintiffs James and Beatrice Burks are black citizens of the United States and the State of New York. Plaintiffs James and Beatrice Burks are clients of plaintiff R. L. Black and plaintiff R. L. Black has prepared their federal income tax returns for the years 1972 and 1973. Plaintiffs are married and filed a joint federal income tax return for those years. Plaintiffs James and Beatrice Burks presently reside at 101 East Milton Street, Freeport, New York.

6. Plaintiffs Shannon Baird and Sharon Baird are black citizens of the United States and the State of New York. Plaintiffs Shannon and Sharon Baird are clients of plaintiff R. L. Black and plaintiff R. L. Black prepared their federal income tax returns for the years 1972 and 1973. Plaintiffs are married and filed a joint federal income tax return for those years. Plaintiffs Shannon Baird and Sharon Baird presently reside at 146-52 223rd Street, Cambria Heights, New York.

7. Plaintiffs Alvin and Marsha Black are black citizens of the United States and the State of New York. Plaintiffs Alvin and Marsha Black are clients of plaintiff R. L. Black and plaintiff R. L. Black has prepared their tax returns for the years 1971 through 1973. Plaintiffs are married

and filed joint federal income tax returns for those years. Plaintiffs presently reside at 25 Rutland Road, Freeport, New York.

8. Plaintiffs Furman G. Rentz and Mignonne Rentz are black citizens of the United States and the State of New York. Plaintiffs Furman G. Rentz and Mignonne Rentz are clients of plaintiff R. L. Black and plaintiff R. L. Black has prepared their federal income tax returns for the year 1973. Plaintiffs are married and filed a joint federal income tax return for that year. Plaintiffs presently reside at 49-07 133rd Avenue, South Ozone Park, New York.

9. Plaintiffs Vincent Sanford and Etheline Sanford are black citizens of the United States and the State of New York. Plaintiffs Vincent and Etheline Sanford are clients of plaintiff R. L. Black and plaintiff R. L. Black prepared their federal income tax returns for the years 1971 and 1973. Plaintiffs are married and filed joint federal income tax returns for those years. Plaintiffs presently reside at 44 Rockaway Parkway, Brooklyn, New York.

10. Plaintiff Lee E. Simien is a black citizen of the United States and the State of New York. Plaintiff Simien is a client of plaintiff R. L. Black and plaintiff R. L. Black prepared her federal income tax returns for the years 1970, 1971, 1972 and 1973. Plaintiff Simien presently resides at 115-52 Lincoln Street, Ozone Park, New York.

11. Plaintiffs Leslie Small and Solla Small are black citizens of the United States and the State of New York. Plaintiffs Leslie and Solla Small are clients of plaintiff R. L. Black and plaintiff R. L. Black prepared their federal income tax return for the year 1973. Plaintiffs are married and filed a joint federal income tax return for that year. Plaintiffs presently

12. Plaintiffs Roy T. Black and Gertrude Black are black citizens of the United States and the State of New York. Plaintiffs Roy T. Black and Gertrude Black are clients of plaintiff R. L. Black and plaintiff R. L. Black prepared their federal income tax returns for the years 1970, 1971, 1972, and 1973. Plaintiffs are married and filed joint federal income tax returns for those years. Plaintiffs presently reside at 128-09 142 Street, South Ozone Park, New York.

13. Plaintiffs Nathaniel Montgomery and Tommie Montgomery are black citizens of the United States and the State of New York. Plaintiffs Nathaniel Montgomery and Tommie Montgomery are clients of plaintiff R. L. Black and plaintiff R. L. Black prepared their income tax returns for the years 1969, 1970, 1971, 1972 and 1973. Plaintiffs are married and filed joint returns for those years. Plaintiffs presently reside at 71-15 Beach Channel Drive, Queens, New York.

14. Plaintiffs J. V. Black and Gennie Black are black citizens of the United States and the State of New York. Plaintiffs J. V. and Gennie Black are clients of plaintiff R. L. Black and plaintiff R. L. Black prepared their income tax returns for the years 1969, 1970, 1971, 1972 and 1973. Plaintiffs are married and filed joint returns for those years. Plaintiffs presently reside at 140-17 173rd Street, Springfield Gardens, New York.

15. Plaintiffs bring this action on their own behalf and as a class action pursuant to Rule 23(b) of the Federal Rules of Civil Procedure on behalf of all persons who transact business with plaintiff R. L. Black and who contract with plaintiff R. L. Black with respect to the preparation and filing of their federal tax returns. Plaintiffs' claims are typical of the claims of their class and plaintiffs will fairly and adequately protect the class' interests. The defendants have acted and refused to act on grounds generally applicable to the class thereby making appropriate final injunctive declaratory relief with respect to the class as a whole.

16. Defendant William E. Simon is the Secretary of the Treasury of the United States of America and as such is responsible under 26 U.S.C. §7801 for the administration and enforcement of the Internal Revenue Code.

17. Defendant Donald Alexander is the Commissioner of the Internal Revenue Service and is appointed by defendant Simon under the authority of 26 U.S.C. §7802. Defendant Alexander, with the approval of defendant Simon has the authority to prescribe and enforce all rules and regulations necessary for the enforcement of the Internal Revenue Code.

18. Defendant Charles Brennan is the District Director of the Internal Revenue Service for the Brooklyn District, City of New York, State of New York. Defendant Brennan has the responsibility for control over all Internal Revenue Service agents in the Brooklyn District of the City of New York, State of New York.

STATEMENT OF THE FACTS

19. That plaintiffs and their class have been unduly harrassed, investigated and examined by defendants and their agents and employees with regard to their federal income tax returns filed over the years 1971 through 1973. Various plaintiffs and members of their class have been subjected to various illegal and/or unconstitutional acts by defendants and their agents and employees, said acts including but not being limited to:

- (a) Repetitive visits by Internal Revenue Service agents to plaintiffs' homes where said Internal Revenue Service agents have asked for verification of items claimed as deductions or exemptions, proof that the children and other dependents claimed on their income tax returns are in fact their children, proof of blindness exemptions, etc.

- (b) Intimidation and harrassment of various plaintiffs and their class and their families, including but not limited to writing down license plate numbers of automobiles parked near their homes, waiting in automobiles down the street from their homes, threatening them with audits and summonses if they did not answer the questions of the Internal Revenue Service agents.
- (c) Repetitive visits by Internal Revenue Service agents to plaintiffs' places of employment and businesses and damaging their reputations by leaving cards, letters and summonses at said places of employment and business.
- (d) Withholding refunds of plaintiffs and their class while allegedly conducting an investigation of plaintiff R. L. Black's income tax service.
- (e) Requiring plaintiffs and their class to attend meetings concerning their exemptions and deductions in Kings County even though the vast majority of the plaintiffs live in Queens and Long Island and there are numerous Internal Revenue Service branch offices in Queens and Long Island.
- (f) Serving upon various plaintiffs and their class summonses which are invalid and known to be invalid by defendants and their agents.
- (g) Serving upon various plaintiffs and their class summonses which illegally and wrongfully order them to turn over information already in the possession of the Internal Revenue Service.

- (h) Serving summonses upon various plaintiffs and their class which are overbroad, disproportionate to the end sought and not relevant to a legitimate purpose.

20. That in a letter dated June 26, 1972 (copy attached hereto and marked Exhibit "A"), plaintiff R. L. Black was informed by the Internal Revenue Service that returns prepared by plaintiff R. L. Black are currently under a special joint investigation.

21. That plaintiff R. L. Black, as stated earlier, has approximately 560 clients for which he performs federal income tax services. Of these 560 clients, approximately 80 have received letters from the Internal Revenue Service notifying them that additional information is needed to verify their correct tax (a representative copy of said letters is attached hereto and marked Exhibit "B").

22. That in addition, six other clients of plaintiff R. L. Black have received summonses ordering them to produce various documents used in the preparation of their tax returns for various years. Approximately 70 clients have been interrogated or received summonses at their homes or places of employment. Approximately 110 clients have had their tax refunds withheld pending an investigation by the Internal Revenue Service.

23. That upon information and belief, and by virtue of the acts of defendants and their agents and employees set forth in paragraphs 18 through 21 hereof, the defendants and their agents and employees are attempting to destroy plaintiff R. L. Black's business. On at least one occasion, an agent of the Internal Revenue Service informed plaintiff R. L. Black's clients that the Internal Revenue Service was going to "run plaintiff R. L. Black out of business."

24. That upon information and belief, said investigation of plaintiff R. L. Black and his business is based in whole or in part on plaintiffs and their class' race or color. On one occasion, an agent of the Internal Revenue Service, Mr. Leo Liverwitz, asked plaintiff R. L. Black if he had any white clients.

25. That upon information and belief, the auditing, summoning, investigating, withholding of tax refunds, interrogation, examination and visitation to homes and places of employment of plaintiffs and their class is being conducted by defendants and their agents and employees solely to harrass and intimidate plaintiff R. L. Black's clients in order that they become reluctant to use the services of plaintiff R. L. Black.

STATEMENT OF CLAIM

26. That the above-stated conduct by defendants is not in good faith and constitutes unnecessary examination, investigation and harrassment of plaintiffs and their class and is therefore violative of the Internal Revenue Code, 26 U.S.C. §7605.

27. That said conduct by defendants is violative of plaintiffs and their class' rights under the Fifth Amendment to the United States Constitution in that said examination, investigation and harrassment is based on plaintiffs and their class' race and color and constitutes racial discrimination against plaintiffs and their class.

28. That said conduct by defendants is arbitrary, capricious and has no rational basis and therefore deprives plaintiffs and their class of their liberty and property without due process of the law in violation of the Fifth Amendment to the United States Constitution.

29. That said conduct by defendants in unnecessarily examining, investigating and harrassing plaintiff R. L. Black's clients, including the

withholding of their tax refunds which is resulting in the destruction of plaintiff R. L. Black's business and therefore constitutes a taking of plaintiff R. L. Black's private property without just compensation.

30. That said conduct by defendants in issuing invalid summonses to clients of plaintiff R. L. Black, demanding information already in the possession of the Internal Revenue Service and stating that defendants are investigating the tax liability of plaintiff R. L. Black is violative of the Internal Revenue Code, 26 U.S.C. §7602 and judicial decisions interpreted thereunder.

31. That said conduct by defendants in interrogating plaintiffs in their homes, businesses and places of employment solely because they are clients of plaintiff R. L. Black is an arbitrary and unwarranted invasion of privacy in violation of the Ninth Amendment to the United States Constitution.

32. That said conduct by defendants in issuing summonses and requiring production of records to verify deductions and exemptions to clients of plaintiff R. L. Black for the purpose of investigating plaintiff R. L. Black's business is an abuse of the examination and inspection procedures of the Internal Revenue Code.

33. That said conduct as stated in paragraph 19 of this complaint is also violative of the plaintiffs and their class' rights under the Fourth Amendment to the United States Constitution, the Internal Revenue Code and the Constitution of the United States in that no independent basis exists for concluding that said clients of plaintiff Black have violated the Internal Revenue Code.

34. That said summonses, investigations, examinations and inspections of plaintiffs and their class are not being issued and conducted

for a legitimate purpose and that some of the information sought is already in the possession of the defendants and is therefore violative of the Internal Revenue Code and the Constitution of the United States.

35. Said conduct by defendants in requiring plaintiffs and their class to submit to examination and inspection of their tax records at 35 Tilary Street, Brooklyn, New York, is violative of 26 U.S.C. §7605(a) in that said place of examinations is unreasonable under the circumstances since the vast majority of plaintiffs and their class reside in Queens, Jamaica and Long Island where numerous branch offices of the Internal Revenue Service exist. The requirement that plaintiffs and their class travel such an unreasonable and unnecessary distance from their homes and places of business is unjustified under 26 U.S.C. §7605(a) and further constitutes unnecessary harrassment under 26 U.S.C. §7605.

36. That the issuance of said summonses to plaintiffs and their class is an overbroad, disproportionate method for the end sought. Said summonses, investigations, examinations and inspections are being used solely as a means of investigating and harrassing the income tax business of plaintiff R. L. Black and are therefore an abuse of the summons process set up by 26 U.S.C. §§7601 to 7609.

37. That said conduct of defendants in withholding the tax refunds of the clients of plaintiff R. L. Black while conducting an investigation of plaintiff R. L. Black's business is an abuse of the Internal Revenue Code and the Constitution of the United States. The withholding of said tax refunds is unnecessary for the purpose of conducting an investigation of plaintiff R. L. Black's business and is merely being used as a device to harrass innocent clients of plaintiff R. L. Black and to destroy the business of plaintiff R. L. Black.

38. That all of the aforementioned acts are wanton, malicious, tortious and defamatory and are committed with the intent to drive plaintiff R. L. Black out of business by intimidating plaintiff R. L. Black and his clients. Plaintiff R. L. Black's business and reputation have incurred irreparable injury as a result of the acts of defendants and their employees and agents.

39. That plaintiffs and their class have no adequate remedy at law and unless this Court issues declaratory and injunctive relief plaintiffs and their class will continue to suffer irreparable injury.

DEMAND FOR RELIEF

WHEREFORE, plaintiffs and their class pray that this Court:

1. Issue a declaratory judgment declaring the following acts to be null and void as being violative of the rights of plaintiffs and their class.
 - (a) the use of summonses, audits, investigations, examinations and inspections of the clients of plaintiff R. L. Black as a means of investigating the income tax business of plaintiff R. L. Black.
 - (b) the withholding of tax refunds due plaintiffs and their class solely because they are clients of plaintiff R. L. Black and pending an investigation of plaintiff R. L. Black's income tax service.
 - (c) the visitation and interrogation of plaintiffs and their class at their homes and places of business.
 - (d) the requirement that plaintiffs and their class have to attend examinations and inspections pursuant to summonses and letters in the Internal Revenue Service office in Kings County, when

branch offices of the Internal Revenue Service are located near plaintiffs and their class' homes and places of employment.

- (e) the investigation and examination of plaintiff R. L. Black's income tax service on the basis of his race and color and the race and color of his clients.
- (f) the examination, investigation, interrogation, visitation, auditing and withholding of tax refunds of plaintiffs and their class on the basis of their race and color.
- (g) all of the acts, practices and conduct of defendants which constitute unnecessary harrassment of plaintiffs and their class in the investigation and examination of their income tax returns.

2. Enter a preliminary and permanent injunction restraining defendants, their agents, employees and successors in office from.

- (a) using summonses, audits, interrogations, visitations, inspections and examinations of the clients of plaintiff R. L. Black as a means of investigating the income tax business of plaintiff R. L. Black.
- (b) using summonses, audits, interrogations, visitations, inspections and examinations and withholding of tax refunds due to plaintiffs and their class unless an independent basis exists for determining that plaintiffs and their class have

violated the Internal Revenue Code and regulations.

- (c) using summonses, audits, interrogations, visitations, inspections and examinations of plaintiffs and their class on the basis of their race and color.
- (d) continuing to summons, interview, examine, investigate and to audit plaintiffs and their class' income tax returns in Kings County and to order defendants to conduct interviews, investigations and audits at locations more convenient to plaintiffs and their class.
- (e) withholding the income tax refunds of the clients of plaintiff R. L. Black.

3. Award plaintiff R. L. Black damages in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) as compensation for the malicious and tortious acts of defendants and their agents in injuring the business and reputation of plaintiff R. L. Black.

4. Award plaintiffs and their class damages in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000) as compensation for the injuries suffered due to the defendants and their agents and employees illegal and unconstitutional acts.

5. Plaintiffs and their class further pray for such additional relief as the cause of justice requires, including their costs, disbursements and reasonable attorney's fees.

Dated: New York, N. Y.
July 9, 1974

Thomas Hoffman, Attorney for Plaintiffs
200 West 57 Street
New York, New York 10019

David W. Lee, Attorney for Plaintiffs
200 West 57 Street
New York, New York 10019

EXHIBITS ANNEXED TO FOREGOING COMPLAINT

EXHIBIT A - LETTER FROM IRS TO R.L. BLACK DATED JUNE 26, 1974

Exhibit "A"

Internal Revenue Service

Date:

JUN 26 1974

in reply refer to:

AU 2003 I. Gold

Mr. R. L. Black
201-10 Linden Blvd.,
St. Albans, New York 11412

Dear Mr. Black:

We are returning the enclosed Power of Attorney Forms 2848 for your information as they were not completed according to prescribed requirements.

The portion of the form which states

"... as attorney(s)-in-fact to represent the taxpayer(s) before any office of the Internal Revenue Service with respect to (specify Internal Revenue tax matters and years or periods)"

must show the type of tax and years involved; i.e., income tax returns for 1972 and 1973 years.

Please submit properly completed Forms 2848 within fifteen (15) days from the date of this letter for the taxpayers you wish to represent.

You have been advised that returns prepared by you and selected for audit are currently under a special joint investigation with the Intelligence Division for examination at our Brooklyn office at 35 Tillary Street.

Your request for transfer of these cases from Brooklyn to Jamaica is denied. The policy of the Service is not to transfer a return under examination for the convenience of the representative.

Please call the number shown on the initial call in letter so that mutually convenient appointments can be arranged at the Tillary Street office.

- Failure on your part to comply with our request will necessitate our taking appropriate action to complete the audit of these returns.

Your cooperation is appreciated.

Very truly yours,

Richard L. Keckner
ACU Chief, Examination Branch III

Enclosures: Powers of Attorney

James & Beatrice Burke
J.V. & Gennie Black
Louis & Paule Chesinard
Yvonne Smith
Clarence & Leola Greene
William & Kathleen Brown
Victor & Claretha Williams
Furman G. & Mignonne Rentz
Donella Adams
Patricia Hill
Claude & Olga Pratt
Charles & Florine Jones
Mary Robinson
Allan & Julita Smith
Alvin & Marsha Black
Terry L. Bryant
Stanley Norwood
Shannon & Sharon Baird
Felix & Rose Moultrie
Roy T. & Gertrude Black
Irving & Margaret Fisher
James & Doris Grant
Albert Thrower

EXHIBIT B - REPRESENTATIVE LETTER FROM IRS

17a

Internal Revenue Service

Exhibit "B"

Department of the Treasury

Date: 5/1/73

Tax Year(s): 1973

Day and Date of Appointment: 4/1/73

Time: 9 AM

Place of Appointment: Office of the District Director, Brooklyn District

35 West Street

Brooklyn, New York 11201

Room Number:

Contact Telephone Number:

Appointment Clerk: J. L. G. 5141

11211-061-88565-4 236-01-1779 1973

JAMES & BEATRICE BURKS

101 E MILTON ST

FREEPORT NY 11520

Dear Taxpayer:

We are examining your Federal income tax return for the above year(s) and find we need additional information to verify your correct tax. We have, therefore, scheduled the above appointment for you. If you filed a joint return, either husband or wife may keep the appointment.

We would appreciate your bringing to our office the records you used as a basis for the items checked at the end of this letter so we can discuss them with you.

The enclosed Information Guides will help you decide what records to bring. It will save you time if you keep together the records related to each item. Please bring this letter also.

Taxpayers are required by law to substantiate all information reported on their returns when requested. If you do not keep this appointment and do not arrange another, we will have to proceed on the basis of the information we have.

About the examination and your appeal rights—

We realize some taxpayers may be concerned about an examination of their tax returns. We hope we can relieve any concern you may have by briefly explaining why we examine, what our procedures are, and what your appeal rights are if you do not agree with the results.

We examine returns to verify income, exemptions, and deductions. This does not always result in more tax due, nor does the selection of your return for examination imply dishonesty or suspicion of criminal liability. In many cases, the taxpayer's return is accepted as filed or he gets a refund. We are required to collect only the correct tax—no more and no less. But if taxpayers do not substantiate items when requested, we have to act on available information that may be incomplete. That is why your cooperation is so important.

We will go over your return and records and then explain any proposals to change your tax liability. We want you to understand fully any recommended increase

(over)

District Director, Brooklyn District

Form L-14 (Rev. 12-73)

or decrease in your tax, so please don't hesitate to ask questions about anything not clear to you.

If changes are recommended and you agree with the proposals, we will ask you to sign an agreement form. By signing, you will indicate your agreement to the amount shown on the form as additional tax you owe or as a refund due you and simplify closing your case.

Most people agree with our proposals, and we believe this is because they find our examiners to be fair. But you don't have to agree. If you choose, we can easily arrange for you to have your case given further consideration. You need only tell the examiner you want to discuss the issue informally with a supervisor, and a conference will be arranged immediately. If this discussion does not result in agreement, you may take your case to a conferee for still further consideration.

In addition to these District office appeal rights, you may request the Service's Appellate Division, which is separate from the District office, to consider your case. We will be glad to explain this procedure and also how to appeal outside the Service to the courts.

We will also be happy to furnish you a copy of our Publication 556, Audit of Returns, Appeal Rights and Claims for Refund, which explains in detail our procedures covering examinations of tax returns and appeal rights. You can get a copy of this publication by writing us for it or by asking for it when you come to our office.

Your appointment is the next step. We will consider the appointment confirmed if we do not hear from you at least seven days before the scheduled date. We will make our examination as pleasant and brief as possible and will welcome any questions you raise.

Please contact us if you have any questions. Thank you for your cooperation.

Sincerely yours,

Charles Brennan
District Director

Enclosures:
Information Guides

Please bring the records to support the following items reported on your tax return:

- | | | |
|---|---|--|
| <input type="checkbox"/> Alimony Payments | <input checked="" type="checkbox"/> Contributions | <input type="checkbox"/> Moving Expenses |
| <input type="checkbox"/> Automobile Expenses | <input type="checkbox"/> Education Expenses | <input type="checkbox"/> Rental Income and Expenses |
| <input type="checkbox"/> Bad Debts | <input type="checkbox"/> Employee Business Expenses | <input type="checkbox"/> Sale or Exchange of Residence |
| <input type="checkbox"/> Capital Gains and Losses | <input type="checkbox"/> Exemptions | <input type="checkbox"/> Sick Pay Exclusion |
| <input type="checkbox"/> Casualty Losses | <input type="checkbox"/> Interest Expenses | <input type="checkbox"/> Taxes |
| <input checked="" type="checkbox"/> Child and Dependent Care Expenses | <input checked="" type="checkbox"/> Medical and Dental Expenses | <input checked="" type="checkbox"/> Uniforms, Equipment, and Tools |

☐ _____
☒ *These figures are correct and agree with my return.*
Blair

AMENDMENT AS OF RIGHT (Filed September 19,
1974)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----x
R. L. BLACK, et al.,

Plaintiffs,

74 C 1007

vs.

UNITED STATES OF AMERICA, et al.,

Defendants.
-----x

AMENDMENT AS
OF RIGHT

Comes now plaintiffs through their attorney, Thomas Hoffman, and
amend their complaint as of right to add the following count:

COUNT 2

1. That upon information and believe the investigation of Plaintiff
R. L. Black and the R. L. Black Income Tax Service was initiated by Elonia
Spruill.
2. That Elonia Spruill is the mother of plaintiff R. L. Black's former
wife.
3. That Elonia Spruill is an employee of the Internal Revenue Service
and had supervision over the income tax file of plaintiff R. L. Black.
4. That the investigation of plaintiff R. L. Black's income tax
service was initiated by said Elonia Spruill in order to retaliate against
plaintiff R. L. Black for acrimony created because of the dissolution of
the marriage between plaintiff R. L. Black and the daughter of Elonia Spruill.
5. That said initiation of the investigation by Elonia Spruill con-
stitutes an abuse of the powers of her position as an employee of the Internal
Revenue Service.

Dated: New York, New York
September 18, 1974

Thomas Hoffman
Attorney for Plaintiffs
200 West 57 Street
New York, N. Y. 10019
(212) 581-1180

The undersigned, an attorney admitted to practice in the courts of New York State,

☐ Certification By Attorney certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

☐ Attorney's Affirmation shows: deponent is

Check Applicable Box

the attorney(s) of record for in the within action; deponent has read the foregoing and knows the contents thereof; the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

Check Applicable Box

☐ Individual Verification

the foregoing being duly sworn, deposes and says: deponent is in the within action; deponent has read and knows the contents thereof; the same is true to those matters deponent believes it to be true.

☐ Corporate Verification

the of in the within action; deponent has read the foregoing and knows the contents thereof; and the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true. This verification is made by deponent because is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on

19

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss.:

is over 18 years of age and resides at New York being duly sworn, deposes and says: deponent is not a party to the action,

☒ Affidavit of Service By Mail

On Sept. 16, 19 74 deponent served the within affidavit as of 11:24 upon George H. Weller in this action, at 845 Madison Avenue, New York 17 the address designated by the attorney(s) for the purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in a post office — official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Check Applicable Box

☐ Affidavit of Personal Service

On 19 at upon the person so served to be the person mentioned and described in said papers as the personally. Deponent knew the therein.

Sworn to before me on

September 17,

19

74

The name signed must be printed beneath

David W. Lee

THOMAS HOFFMAN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31 6931965
Qualified in New York County
Commission Expires March 30, 1975

NOTICE OF MOTION FOR A PRELIMINARY INJUNCTION (Filed October 1, 1974)
 IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF NEW YORK

-----X
 R. L. BLACK, et al.,

Plaintiffs,

74 C 1007

vs.

UNITED STATES OF AMERICA, et al.,

Defendants.
 -----X

:
 :
 :
 : NOTICE OF
 : MOTION FOR A
 : PRELIMINARY
 : INJUNCTION

To: David G. Trager
 U.S. Attorney - Eastern District of N. Y.
 Attorney for Defendants
 225 Cadman Plaza East, Brooklyn, N. Y. 11201
 Attention: George H. Weller, Asst. U.S. Attorney

PLEASE TAKE NOTICE that upon the complaint filed in this case and upon the attached Motion for a Preliminary Injunction and Memorandum in support thereof with attached affidavits and exhibits, the plaintiffs will move this Court, before the Honorable Anthony Travia, at the United States Court-house, 225 Cadman Plaza East, Brooklyn, New York on the 4th day of October, 1974 at 9:30 o'clock a.m. or as soon thereafter as counsel may be heard, for an Order.

GRANTING the plaintiffs the preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure prohibiting defendants from:

1. Using summonses, audits, interrogatories, visitations, inspections and examinations of plaintiffs and other clients of R. L. Black as a means of investigating the income tax service of plaintiff R. L. Black and
2. Withholding refunds due plaintiffs and other clients of plaintiff R. L. Black.

Dated: New York, N. Y.
 September 18, 1974

Respectfully submitted,

Thomas Hoffman

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK-----X
R. L. BLACK, et al.,

Plaintiffs.

74C 1007

vs.

UNITED STATES OF AMERICA, et al.,

Defendants.
-----XMOTION FOR
PRELIMINARY
INJUNCTION

Plaintiffs through their attorney, Thomas Hoffman, move the Court to grant the following relief:

1. Prohibit defendants from using summonses, audits, interrogatories, visitations, inspections and examination of plaintiffs and other clients of R. L. Black as a means of investigating the income tax service of plaintiff R. L. Black and
2. Prohibit defendants from withholding refunds due plaintiffs and other clients of plaintiff R. L. Black.

Plaintiffs seek this relief on the ground that:

1. Plaintiffs have no adequate remedy at law and the defendants will continue to cause plaintiffs irreparable harm, unless enjoined by this Court and
2. That the actions of defendants are violative of the due process clause of the Fifth Amendment to the United States Constitution and of the Internal Revenue Code, regulations promulgated thereunder and decision interpreting the Code and regulations.

In support thereof, plaintiffs submit the attached Memorandum of Law with attached exhibits and affidavits. No previous motion or application for the relief herein prayed for has been made.

Dated: New York, N. Y.
September 18, 1974

Respectfully submitted,
Thomas Hoffman

MEMORANDUM IN SUPPORT OF PLAINTIFFS' AND THEIR CLASS' MOTION
FOR A PRELIMINARY INJUNCTION (Filed October 1, 1974)

23a

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X

R. L. BLACK, ADA SMITH, JAMES BURKS, BEATRICE
BURKS, SHANNON BAIRD, SHARON BAIRD, ALVIN
BLACK, MARSHA BLACK, FURMAN G. RENTZ,
MIGNONNE RENTZ, VINCENT SANFORD,
ETHELIN SANFORD, LEE E. SIMIEN, LESLIE
SMALL, SOLLA SMALL, ROY T. BLACK, GERTRUDE
BLACK, NATHANIEL MONTGOMERY, TOMMIE
MONTGOMERY, J. V. BLACK, GENNIE BLACK,
on behalf of themselves and on behalf of all others
similarly situated,

Plaintiffs,

74C 1007

vs.

UNITED STATES OF AMERICA, WILLIAM E.
SIMON, Secretary of the Treasury, DONALD
ALEXANDER, Commissioner, Internal Revenue
Service, CHARLES BRENNAN, District Director,
Internal Revenue Service, Brooklyn District,
and other unknown agents of the Internal Revenue
Service,

Defendants.

-----X

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
AND THEIR CLASS' MOTION FOR A PRELIMINARY
INJUNCTION

Preliminary Statement

Plaintiff R. L. Black operates the R. L. Black Income Tax Service wherein he prepares federal, state and city tax returns and he has been engaged in the income tax business since 1971, deriving all of his income from this service. Plaintiff R. L. Black has developed this business into a fairly successful venture; i. e., from an initial 20 clients he has increased his business to 560 clients. The remaining plaintiffs in this action are clients who have had their income tax forms prepared by the R. L. Black Income Tax Service and who presently are having the refunds due them from the IRS withheld. Virtually all of plaintiff R. L. Black's clients are black

and a substantial number are low income. In view of this, the R. L. Black Income Tax Service provides an option whereby a client can either pay his fee immediately or, if the client is entitled to a refund, have the refund from the Internal Revenue Service (hereinafter the IRS) forwarded to the R. L. Black Income Tax Service where the fee is deducted and the remainder of the refund is then forwarded to the client.¹

Upon information and belief, the income tax service of plaintiff Black is being criminally investigated by the IRS. The IRS has been visiting Mr. Black's clients' residences and places of business and has been advising his clients that Mr. Black is under criminal investigation, it has been issuing illegal summonses to his clients and has been telling his clients that the deductions which were claimed on their income tax returns were not valid. The IRS has also illegally been using the power of the summons to intimidate clients into appearing at IRS offices out of the county of residence of the client for questioning. IRS agents have been telling clients that their refunds would be withheld pending the conclusion of the investigation of R. L. Black, and, in an attempt to elicit information from some clients, clients have been called into IRS offices for audits.

A total of at least 85 clients have been interrogated at either their homes or places of business and more than 120 clients have had their refund check withheld. As a result of the action taken by the IRS plaintiff Black's business is being severely damaged and only a preliminary injunction preventing the freezing of these refund checks and preventing the course of harrassment practiced upon plaintiff's clients will prevent irreparable damage to the income tax service.

¹ Clients are billed \$20 for short form federal, state and city returns and \$30 for simple long form federal, state and city returns.

PROPOSITION I

THE COURSE OF ACTION TAKEN BY THE IRS IN INVESTIGATING MR. BLACK'S INCOME TAX SERVICE CLEARLY VIOLATES THE INTERNAL REVENUE CODE. THE REGULATIONS PROMULGATED THE REUNDER AND DECISIONS INTERPRETING THE CODE AND REGULATIONS

Title 26, Section 7602 of the Internal Revenue Code authorizes the issuance of summonses for the purpose of determining tax liability of any person. Courts have construed this Section accordingly and have therefore refused to enforce such a summons when improperly issued. U.S. v. Salter, 432 F.2d, 697 (1st Cir. 1970).

The summonses issued pursuant to Section 7602 cannot be abused when investigating a third party's records. U.S. v. Theodore, 479 F.2d 749 (4th Cir. 1973), the court expressed its disapproval of the use of summonses by the IRS in investigating a third party, particularly when the IRS is investigating a professional service. The court stated:

"... where it appears that the purpose of the summons is 'a rambling exploration' of a third party's files, it will not be enforced. . . . Section 7602 summonses are not meant to serve as a tool to police the accounting profession." (emphasis added) at 754. See also U.S. v. Theodore, supra, U.S. v. Harrington, 388 F.2d 520 (2d Cir. 1963); U.S. v. Dauphin Deposit Trust Co., 385 F.2d 129 (3rd Cir. 1967); U.S. v. Williams, 337 F. Supp. 1114 (S.D. N.Y. 1971) and U.S. v. Humble Refining Co., 488 F.2d 953 (5th Cir. 1974) (where the court held that summonses could not be used by the IRS to enlist the aid of citizens in its data-gathering projects.)

Summonses pursuant to Section 7602 cannot be issued in conducting a criminal investigation. U.S. v. Couch, 410 U.S. 2d 141 Affirmed 93 S.Ct. 611, 409 U.S. 322, 34 L.Ed 2d 548 (1971). It is clear that the summonses which were issued to the clients of plaintiff Couch were for the purpose of the criminal investigation since it was being conducted by the Intelligence Division of the IRS. F.T.R. Sect. 601.107(a). Exhibits O and P demonstrate that the summonses were issued by the Intelligence Division since they were returnable before a Frank Perniola, a special agent of said Intelligence

Division authorized to conduct criminal investigations.

The courts have generally been circumspect in requiring particularity in the records sought in investigating a third party. U.S. v. Harrington, supra; U.S. v. Williams, supra. The IRS cannot subpoena records already in the possession of the IRS. U.S. v. Pritchard, 438 F. 2d 969 (5th Cir. 1971).

Concededly, the IRS has investigative powers; however, these powers are not without limit and cannot be abused. U.S. v. Powell, 379 U.S. at 58; and U.S. v. Harrington, supra.

The Second Circuit held that investigation is "unreasonable and impermissible if it is overbroad and out of proportion to the end sought." U.S. v. Harrington, supra. Judge Lumbard of the Second Circuit in U.S. v. Harrington, supra, went further to say that the power cannot be abused in random disregard of the personal interests involved, particularly where third parties are involved. The burden which such investigation would impose upon third parties: i.e., Mr. Black's clients, must be weighed and considered. U.S. v. Williams, supra. (Court recognized the displeasure a psychologist's patients would feel at the disclosure of the fact of their treatment and government questioning about the extent and cause of their visits.)

The pattern of conduct followed by the IRS in investigating Mr. Black's income tax service puts not only a burden on Mr. Black's clients but creates an obvious dissuasion of his clients or prospective clients to using his service in the future. The following are examples of the type of conduct the IRS has taken in trying to intimidate Mr. Black's clients into furnishing the IRS with information:

1. See Exhibit A - summons to Ada Smith - this request for "all records and documents" is overbroad and is purportedly for a determination of the tax liability of R. L. Black.

2. See Exhibit B - Summons to Mr. and Mrs. Shannon Baird - requesting copies of Federal Income Tax returns and W-2 forms, which information is already in the possession of the IRS. Furthermore, request for "all documents" is overbroad. Note that personal appearance is scheduled for Brooklyn, New York, when the individuals reside in Queens, New York.

3. See Exhibit C - Summons to Furman and Mignonne Rentz - See No. 2., above. Note that five days' notice was given for an appearance, although ten days' notice is required under 26 U.S.C. 7605.

4. See Exhibit D - Affidavit of Furman G. Rentz indicating that agents of the IRS advised client that Mr. Black was under criminal investigation and that Mr. Black's clients may be called in for an audit.

5. See Exhibit E - Affidavit of Shannon Baird indicating that clients were audited shortly after an interview with agents of the IRS.

6. See Exhibit F - Affidavit of Lee E. Simten indicating that clients were informed that Mr. Black was under criminal investigation, were told that their deductions were not true, were contacted at their homes and places of business and were advised that their refund would be withheld until the investigation of R.L. Black was completed.

7. See Exhibit G - Affidavit of Hattie Little indicating that the client was contacted at her home, automobile license plate number was taken down by an IRS agent in an attempt to intimidate client, client was advised that Mr. Black was being investigated, that client's refund would be withheld until the investigation was completed. Client was contacted by telephone three times and visited twice.

8. See Exhibit H - Affidavit of Tommie Samuel indicating that client was audited after an interview with IRS agents concerning Mr. Black.

9. See Exhibit I - Affidavit of Bertha Davis indicating that client was advised that Mr. Black was under criminal investigation, that client was

contacted at her place of employment and that client was threatened that a summons would be issued unless she went to the IRS office.

10. See Exhibit J - Affidavit of James Burks indicating that client was contacted at his home, advised that Mr. Black was under investigation and that his refund would be withheld until said investigation was completed.

11. See Exhibit K - Affidavit of Ada Smith indicating that client was advised by IRS agents that she was trying to "protect Mr. Black" and that unless she told the truth she would receive a summons; that agents further implied that client was not telling the truth and stated "I see Mr. Black has coached you well." The affidavit further indicates that agents then told Ada Smith that she was going to be audited, presumably because she was not cooperative.

12. See Exhibit L - Affidavit of Frances Campbell indicating that client was shown a picture of Mr. Black and was advised that the man pictured was under investigation. Client was further advised by the agents that her deductions were excessive.

13. See Exhibit M - Affidavit of Paul Burke indicating that a refund requested in a short form 1040A filed in April, 1973, still had not been received.

14. See Exhibit N - Affidavit of R. L. Black indicating that more than 120 of his 560 clients have been called in for audits, that at least 85 of his clients have been interrogated at their homes or places of business, that approximately 120 of his clients have had their refund withheld and that Mr. Leo Liverwitz, an IRS agent, questioned Mr. Black as to whether or not he had any white clients and went on to state that the IRS would continue to investigate and interrogate Mr. Black's clients until "we hear what we want to hear."

Federal courts have jurisdiction to enjoin the IRS from engaging in illegal or unconstitutional activities. Green v. Connally, 330 F. Supp. 1150 (D. C. 1971) and DeMasters v. Arend, 313 F. 2d 79 (9th Cir. 1963).

PROPOSITION II

THE ACTION BY THE IRS DEPRIVES PLAINTIFFS
OF THEIR PROPERTY WITHOUT DUE PROCESS
OF LAW

In Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 646, 95 L.Ed. 317 (1951), the Supreme Court enunciated a basic constitutional concept:

"The right to be heard before being condemned to suffer grievous loss of any kind even though it may not involve the stigma and hardship of a criminal conviction is a principle basic to our society."

The necessity of comporting to basic due process requirements before the state acts, so as to take away a basic right, has been zealously guarded by the Court. Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1536, 29 L.Ed. 2d 90 (1971) (driving license under Financial Responsibility Act cannot be taken away without the procedural due process required by the Fourteenth Amendment); Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed. 2d 287 (1970), (prior hearing before termination of welfare benefits); Snidach v. Family Finance Corp., 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed. 2d 340 (1969) (prejudgment garnishment procedure requires notice and prior hearing); Speiser v. Randall, 357 U.S. 513, 78 S.Ct. 1332, 2 L.Ed. 2d 1460 (1958) (denial of a tax exemption); Slochower v. Board of Higher Education, 350 U.S. 551, 76 S.Ct. 637, 100 L.Ed. 2d 692 (1956) (school teacher discharged from public employment); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 2d 865 (1950) (proceedings on judicial settlement of accounts by trustee of a common trust); Opp Cotton Mills v. Administrator, 312 U.S. 126, 61 S.Ct. 524, 85 L. Ed. 624 (1941) (regulating minimum wage in textile industry); Goldsmith v. U.S. Board of Tax Appeal, 270 U.S. 117, 46 S.Ct. 215, 70 L. Ed. 494 (1926) (right of a certified public accountant to practice before the Board of Tax Appeals); Londoner v. Denver, 210 U.S. 373, 385-386, 28 S.Ct. 708,

713-714, 52 L. Ed. 1103 (1908) (challenging tax assessment); Woodbury v McKinnon, 447 F. 2d 839 (5th Cir. 1971) (physicians removal from medical staff); Ferguson v. Thomas, 430 F. 2d 852 (5th Cir. 1970) (termination of a professor); Meredith v. Allen County War Memorial Hospital Commission, 397 F. 2d 33 (6th Cir. 1968) (termination of a physician).

The freezing of the refunds of plaintiff R. I. Black's clients clearly deprives his clients of the property to which they are entitled; i. e., the refund and seriously endangers plaintiff R. I. Black's livelihood for it is readily apparent that an individual who has his refund withheld and is audited and interviewed in his home and place of business merely because he has elected to utilize the income tax service of R. I. Black will most likely not return as a client to R. I. Black. Before the IRS takes such drastic action which results in the ruination of somebody's business, some preliminary determination should be made which would afford plaintiff Black the right to a hearing wherein he could explain the alleged questionable returns and confront the evidence against him.

PROPOSITION III

THE COURT SHOULD ISSUE A PRELIMINARY INJUNCTION TO PREVENT IRREPARABLE DAMAGE TO PLAINTIFFS

It is well settled that in order to obtain a preliminary injunction, plaintiff must demonstrate that 1) he has a reasonable probability of succeeding at trial and 2) that if the preliminary injunction is denied he will suffer irreparable injury. Chappel & Co. v. Frankel, 367 F. 2d 197 (2nd Cir. 1966)²

Speaking to the issue of the "degree to which the plaintiff must show

² likelihood of success arguments are embodied in propositions

that he will succeed at trial. . . . "Norwalk Core v. Norwalk Redevelopment Agency, 298 F. Supp. 203, 207 (D. C. Conn. 1969) affm'd 423 F. 2d 121 (1970). Judge Frank, speaking for the court in Hamilton Watch Co. v. Benrus Watch Co. 206 F. 2d 738, 749 (2nd Cir. 1953), said in his often cited opinion:

"To justify a temporary injunction it is not necessary that the plaintiff's right to a final decision, after a trial, be absolutely certain, wholly without doubt; if the other elements are present (i. e., the balance of hardships tips decidedly toward plaintiff), it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation." (emphasis added)

And, in SEC v. Frank, 388 F. 2d 486, 491 (2nd Cir. 1968), the court, citing Hamilton Watch Co. v. Benrus Watch Co., supra, stated:

"The weight to be given to each of these factors on a motion for a preliminary injunction is not rigidly fixed; the various factors must be weighed, one against the other, to determine where the equities balance. It is not necessary, for example, that the moving party be reasonably certain to succeed on the merits. If the harm that may occur to the plaintiff is sufficiently serious it is only necessary that there be a fair chance of success on the merits." (emphasis added.)

It cannot be disputed that the action of the IRS in taking action against Mr. Black's clients merely because they are his clients, which includes repetitive visits by IRS agents to clients' places of business and employment, advising these people that Mr. Black is under criminal investigation, withholding and freezing of refunds of clients, serving summonses on clients and auditing them clearly has had a deterring effect on a client or a prospective client's decision to employ the services of R. L. Black. When clients who are affected by this "investigation" comprise approximately forty percent (40%) of Mr. Black's total clientele, this would obviously result in a devastating effect on the business of the income tax service which Mr. Black owns and on his ability to derive an income therefrom. Therefore,

this court should use its power of equity by issuing a preliminary injunction to maintain the status quo of the parties pending the final adjudication of the merits of this case. Young v. Netherlands Owners Inc., 306 F. Supp. 1282 (D.D.C. 1969).

CONCLUSION

WHEREFORE, for the reasons heretofore given, this Court should grant plaintiffs' motion for a preliminary injunction.

Respectfully submitted,

Dated: New York, N. Y.
September 18, 1974

Thomas Hoffman
Attorney for Plaintiffs
200 W. 57 St.
New York, N. Y. 10019

EXHIBITS ANNEXED TO FOREGOING MEMORANDUM

EXHIBIT A - SUMMONS TO ADA SMITH

33a



Internal

Service

in the matter of the tax liability of

R. L. BLACK

Internal Revenue District of

BROOKLYN

Period(s)

1970, 1973

The Commissioner of Internal Revenue

ADA SMITH

At 77-15 BEACH CHANNEL DRAPT 4R

Meetings. ARVER, NY. You are hereby summoned and required to appear before

testimony relating to the tax liability or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the place and time hereinafter set forth

~~GEORGE HASS~~
 Officer of the Internal Revenue Service, to give

ALL RECORDS AND DOCUMENT USED
 IN THE PREPARATION OF ADA SMITH'S 1972
 TAX RETURN BY MR R. L. BLACK.

Place and time for appearance:

IRS 14226 357 HILARY ST BROOKLYN NY
 at the 29th day of MARCH 19 74 at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceed-
 in the district court of the United States or before a United States

commissioner or magistrate to enforce obedience to the requirements
 of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code

is 14th day of MARCH 19 74

Tested Copy

Signature

Officer of Internal Revenue Service
 Special Agent

Form 2039-A (Rev. 10-69)

212-596-3031

EXHIBIT B - SUMMONS TO MR. & MRS. SHANNON BAIRD

34a

Internal Revenue Service

the matter of the tax liability of

~~Mr. Shannon~~ Shannon, Baird115-80 220th St Cambrin Heights N.Y.Internal Revenue District of BROOKLYNPeriod(s) 1971 1972 1973

To Commissioner of Internal Revenue

To Mr. & Mrs. Shannon Baird115-80 220th St Cambrin Heights N.Y.

Greetings:

You are hereby summoned and required to appear before

S/A Frank Perriola

an officer of the Internal Revenue Service, to give

testimony relating to the tax liability or the collection of the tax liability of the above named person for the period(s) designated and to bring with you and produce for examination the following books, records, and papers at the place and time hereinafter set forth:

1. Cancelled checks for 1971, 1972 and 1973
2. Receipts for all itemized deductions for 1971, 1972, 1973.
3. ALL w-2's, 1099's, Bank Passbooks, Bank statements for the years 1971, 1972 and 1973.
4. All other documents used in the preparation of your 1971, 1972 and 1973 Federal income tax return.
5. Copies of your 1971, 1972 and 1973 Federal Income Tax returns.

Place and time for appearance:

35 Tillary St Brooklyn N.Y. 11202 Room 226
 on the 3rd day of MAY, 1974 at 10:00 o'clock A.M.

Failure to comply with this summons will render you liable to proceedings in the district court of the United States or before United States commissioner or magistrate to enforce obedience

to the requirements of this summons, and to punish default or disobedience.

Issued under authority of the Internal Revenue Code

This 15th day of APRIL, 1974

Noted Copy

Clement E. Perriola
 Signature

SPECIAL AGENT
 Title

Form 2039-A (Rev. 10-69)

EXHIBIT C - SUMMONS TO FURMAN AND MIGNONNE RENTZ

(Rev. 10-69)


 Department of the Treasury
 Internal Revenue Service

In the matter of the tax liability of

Furman & Mignonne Rentz114-07 133rd Ave. So. Ozone Pk. N.Y.Internal Revenue District of BrooklynPeriod(s) 1972 1973

The Commissioner of Internal Revenue

To Furman & Mignonne RentzAt 114-07 133rd Ave. So. Ozone Pk. N.Y.

Greetings:

You are hereby summoned and required to appear
beforeSh. Frank Pennola
an officer of the Internal Revenue Service, to givetestimony relating to the tax liability or the collection
of the tax liability of the above named person for the
period(s) designated and to bring with you and pro-
duce for examination the following books, records, and
papers at the place and time hereinafter set forth:

1. Cancelled checks for 1972 and 1973
2. Receipts for all itemized deductions for 1972 and 1973
3. All W-2's, 1099's, Bank Passbooks, Bank statements

for the years 1972 and 1973

4. All other documents used in the preparation of
your 1972 and 1973 Federal tax returns5. Copies of your 1972 and 1973 Federal Income
Tax returns

Place and time for appearance:

at 35 Tillary St Brooklyn N.Y. Room 226on the 26 day of March 1974 at 10:00 o'clock A.M.Failure to comply with this summons will render you liable to
proceedings in the district court of the United States or before
a United States commissioner or magistrate to enforce obedienceto the requirements of this summons, and to punish default or
disobedience.

Issued under authority of the Internal Revenue Code

this 21st day of March 1974

Attached Copy

Signature

Frank Pennola

Title

Special Agent

Form 2030-A (Rev. 10-69)

546-2031

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

CIVIL NO. 74C 1007

-----X
R. L. Black, et al.,

Plaintiffs,

vs.

United States of America, et al.,

Defendants.
-----X

AFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) s. s.:
COUNTY OF NEW YORK)

I, Furman G. Rentz of 149-07 133 Avenue, South Ozone Park, New York, being duly sworn, depose and say:

1. That my wife, Mignonne Rentz and I are plaintiffs in the case of R. L. Black, et al. vs. the United States of America, et al.

2. That on February 25, 1974 my wife and I went to R. L. Black Income Tax Service to have our 1973 federal income tax return prepared.

3. That on March 15, 1974 two men visited our home and said that they were special agents from the Internal Revenue Service who were conducting an investigation of R. L. Black. One agent showed me a copy of a tax return and asked me if it was mine and I indicated that it looked like mine.

4. That one of the agents said that they did not have time to talk to us, but asked if they could come back next week. I said, "yes."

5. That on March 22, 1974 the agents returned to our home and when they showed their identification I presented my power of attorney to

R. L. Black to them which they would not accept.

6. That one agent then said that they were just trying to make it easy for us and that if we did not answer their questions they would have to issue a summons. I said that they would just have to give me a summons.

7. That the agent then gave me a summons and said that R. L. Black would not be permitted to represent me because Mr. Black was under criminal investigation. The summons ordered us to appear at an Internal Revenue Service office in Brooklyn, New York.

8. That we went to the Internal Revenue Service office on the date of the appointment and we were asked how Mr. Black had prepared our return. I said that I had written up all of our expenses before I had gone to see Mr. Black and Mr. Black used these figures to claim my deductions.

9. That when I stated that I did not know why my wife and I were under investigation an agent said that we were not under investigation, but that Mr. Black was.

10. That the agents asked how we became acquainted with Mr. Black and I said that he had signs all over the neighborhood. I then asked why we had not received our tax refund and I got no reply.

11. That the agent then said that this meeting was not an audit but that it was possible that we would be called for an audit.

12. That in June of 1974 we received a letter from the Internal Revenue Service scheduling us to appear again at the Internal Revenue Service office in Brooklyn, New York, for an audit.

Furnian G. Rentz

Sworn to before me this
day of _____, 1974

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

CIVIL NO. 74C 1007

R. L. Black, et al.,

Plaintiffs,

VS.

United States of America, et al.,

Defendants.

**AFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

STATE OF NEW YORK)
COUNTY OF NEW YORK) S.S.:

I, Shannon Baird of 146-52 223 Street, Springfield Gardens, New York,
being sworn under penalty of perjury, depose and say:

1. That my wife, Sharon Baird and I are plaintiffs in the case of R. L. Black, et al. vs. the United States of America, et al.
2. That on April 13, 1973 and February 27, 1974, my wife and I went to R. L. Black Income Tax Service to have our federal income tax return prepared for the years 1972 and 1973.
3. That in March of 1974 we were served a summons at our home by an Internal Revenue Service agent ordering us to appear at the Internal Revenue Service office in Brooklyn, New York, and ordering us to bring all information used in the preparation of our 1971, 1972 and 1973 income tax returns.
4. That at our meeting with the Internal Revenue Service on April 18, 1974 we were shown a copy of our 1973 tax return by an agent, asked if it was our return and we indicated that it did look like our return. The agent stated that we were not in any trouble but that the Internal Revenue

Service was conducting an investigation of Mr. Black because the Internal Revenue Service had reason to believe that R. L. Black, on behalf of his clients, is claiming deductions his clients are not entitled to. The agent then asked us questions about all of the deductions that we claimed on our return. We stated that Mr. Black was our representative in this matter and that he had all the information and documents pertaining to our tax returns. The agent then stated that our refund would not be returned until we had been audited by the Audit Department.

5. That in June of 1974 we received a letter from the Internal Revenue Service notifying us that our 1973 return was being audited and asking us for another meeting with the Internal Revenue Service. We immediately took the letter to Mr. Black and signed a power of attorney giving Mr. Black the right to represent us at the meeting.

6. That Mr. Black has never suggested that we claim deductions to which we were not entitled.

7. That to date the Internal Revenue Service has still not issued our refund.

Shannon Baird

Sworn to before me this

_____ day of _____, 1974.

AFFIDAVIT OF LEE E. SIMIEN

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

CIVIL NO. 74C 1007

-----X

R. L. Black, et al.,

Plaintiffs,

vs.

United States of America, et al.,

Defendants.

-----X

AFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

I, Lee E. Simien of 116-52 Lincoln Street, South Ozone Park, New York, being duly sworn, depose and say:

1. That I am a plaintiff in the case of R. L. Black, et al., vs. the United States of America, et al.
2. That on February 8, 1972 I went to R. L. Black Income Tax Service to have my 1971 federal income tax returns prepared and on February 14, 1974 I went to Mr. Black to have my 1973 tax returns prepared.
3. In March of 1973 two men came to my home, identified themselves as special agents of the Internal Revenue Service and asked if a return they showed me was a copy of my 1973 tax return. I responded that it was. I was asked who prepared my return and I said R. L. Black. I was asked how much Mr. Black charged and I said \$40.00. When asked why my refund was being mailed to Mr. Black I said it was because I owed Mr. Black the \$40. The agent asked me how I could pay all of the expenses claimed on my return and not have money to pay for the

preparation of the return. I said because my refund was much more than my paycheck. I was then asked how much I made per week. I showed the agents my paystub and they asked how much I paid for union dues and I stated that I thought it was \$72 per year.

4. That the agents then stated that they did not come to cause me any harm or trouble but that they were investigating Mr. Black. They asked if I had receipts to prove my deductions and claims and I said, "yes" I could show them some of my receipts.

5. That one agent then asked whether Mr. Black estimated the amount of deductions claimed or if Mr. Black told me how much to claim. I responded that I told Mr. Black what my expenses were.

6. That one agent then said that I knew and he knew that all of these deductions are not true. For example, he said that I knew that I did not pay that much money to the church.

7. That the agent then said that they were not getting anywhere here with this woman. They told me to get all of my receipts and to call the Internal Revenue Service for a second interview. They gave me a card with their names on it.

8. That I called R. L. Black and told him what had happened. Mr. Black said to call the Internal Revenue Service and tell them that if they had any more questions or wanted any more information, to call R. L. Black and that all future questions would be answered by R. L. Black.

9. That on March 14, 1974, two agents from the Internal Revenue Service visited my home again, my sister answered the door and told them that I was not at home. The agents insisted that my sister accept what appeared to be a summons which she refused to accept. The agents told my

sister that they were just trying to save me from getting into a lot of trouble. They told her that they would take the summons up to my job.

10. That when I arrived at work on March 14, 1974 at 10:50 p.m. I had a note on my time card along with the names of two special agents (John P. Everett and Franklin M. Perniola) asking me to call the agents.

11. That in May of 1974 I received a letter from the Internal Revenue Service indicating that I should appear at the Internal Revenue Service office in Brooklyn, New York.

12. That I have been told by the Internal Revenue Service that I would not receive my refund for my 1973 overpayment until the investigation of R. L. Black is completed.

Lee E. Simien

Sworn to before me this

____ day of _____, 1974.

EXHIBIT G - AFFIDAVIT OF HATTIE LITTLE

43a

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

CIVIL NO. 74C 1007

-----X

R. L. Black, et al,

Plaintiffs,

vs.

United States of America, et al.,

Defendants.

-----X

AFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) s.s. :
COUNTY OF NEW YORK)

I, Hattie Little of 119-41 146 Street, South Ozone Park, New York,
being duly sworn depose and say:

1. That on March 13, 1973 I went to R.L. Black Income Tax Service
to have my 1970, 1971 and 1972 tax returns prepared. I went to Mr. Black
on June 15, 1973 to have my returns for 1967, 1968 and 1969 prepared.
On February 12, 1974 I went to Mr. Black to have my 1973 tax return
prepared.

2. That in April of 1974 two men came to my home and spoke to my
son- who was playing in the front yard. The men gave my son a card
indicating that they were agents with the Internal Revenue Service. During
this encounter, I was looking out the window and observed the agents
writing down the license plate number of my automobile.

3. That shortly after this visit to my home I received a telephone call from an Internal Revenue Service agent in which he stated that if I refused to be interviewed at my home, Internal Revenue would issue a summons ordering me to appear at 35 Tillary Street, Brooklyn, New York.

4. That after I received this telephone call I telephoned Mr. Black who advised me to go ahead and talk with the Internal Revenue Service agents at my home. I then returned the call to the Internal Revenue Service and agreed to a home visit.

5. That the visit to my home was attended by two Internal Revenue Service Agents who asked me how I had become acquainted with R. L. Black. I told the agents that I had passed by Mr. Black's store front office.

6. That the agents asked me about various deductions I had claimed and I referred them to Mr. Black for specific information as he had all of my records.

7. That one of the agents stated that I should not be afraid, that they were not investigating me, but were investigating Mr. Black. The agent then asked me if Mr. Black had told me what to claim on my tax returns. I responded that he had not and that I had receipts for my deductions.

8. That I was then told that I would not receive my federal tax return until the investigation was completed.

9. That after this visit I received approximately three more telephone calls from the Internal Revenue Service asking me for a second interview.

10. That in May of 1974 I received a letter scheduling me for an appearance at the Internal Revenue Service office in Brooklyn, New York for an audit of my 1973 federal tax return. To date, I have not received my refund for my 1973 overpayment.

Hattie Little

Sworn to before me this

_____ day of _____, 1974

EXHIBIT H - AFFIDAVIT OF TOMMIE SAMUEL
IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

45a

CIVIL NO. 74C 1007

R. L. Black, et al.,

Plaintiffs,

vs.

United States of America, et al.,

Defendants.

AFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK)

) s. s.:

COUNTY OF NEW YORK)

I, Tommie Samuel, of 189-14 114 Drive, St. Albans, New York, being duly sworn, depose and say:

1. That my wife, Nancy Samuel and I went to R. L. Black Income Tax Service on February 14, 1973 and in February of 1974, to have our 1972 and 1973 income tax returns prepared.

2. That on March 12, 1974, an Internal Revenue Service agent visited me on my job between 4:00 and 4:30 p. m. indicating that he wanted to make an appointment to visit with me at my home. We agreed on an appointment for that evening between 7:00 and 7:30 p. m.

3. That at the evening meeting two agents were present, they showed me a 1972 tax return, asked me if it was mine and I said that it was.

4. That an agent asked me if Mr. Black had estimated my expenses or if I told him the expenses I incurred and I advised him that I told Mr. Black what my expenses were.

5. That the agent then told me that it was possible that I would be called upon for an audit by the Internal Revenue Service.

46a

6. That the agent inquired as to Mr. Black's fee for his services and I advised him Mr. Black's fee was \$30 for 1972 and 1973. That the agent inquired as to how I became acquainted with R. L. Black Income Tax Service and I advised that it was through advertising that I had read.

7. That I have received my tax refunds but that in July of 1974 I received a letter from Internal Revenue Service scheduling me for an audit.

TOMMIE SAMUEL

Sworn to before me this

_____ day of _____, 1974.

EXHIBIT I - AFFIDAVIT OF BERTHA DAVIS
IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

47a

CIVIL NO. 74C 1007

-----X
R. L. Black, et al.,

Plaintiffs,

vs.

United States of America, et al.,

Defendants.
-----X

AFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

I, Bertha Davis, of 673 Hancock Street, Brooklyn, New York, being
duly sworn under penalty of perjury, depose and say:

1. That on February 2, 1974 I went to R. L. Black Income Tax Service
for the preparation of my 1973 federal income tax returns.
2. That in March of 1974 two special agents from the Internal Revenue
Service visited me on my job and indicated that they were not investigating
me, but rather Mr. R. L. Black. They asked me if when Mr. Black prepared
my returns, I told Mr. Black what my expenses were or if Mr. Black es-
timated my expenses for me. I told the agent that I told Mr. Black what my
expenses were, after Mr. Black explained to me what expenses I was en-
titled to deduct.
3. That the agents then indicated that they would prefer that I visit
an Internal Revenue Service office after work for a more detailed interview.
When I indicated that I would contact Mr. Black to represent me at the inter-
view, the agents stated that Mr. Black could not represent me because he
was under criminal investigation.
4. That I immediately contacted Mr. Black and told him what had
transpired on my job. Mr. Black told me that I had a right to representa-

tion, advised me not to return the telephone call to the Internal Revenue Service and further advised that unless I received a summons I did not have to go to an Internal Revenue Service office.

5. That I subsequently received telephone calls from persons who identified themselves as agents of the Internal Revenue Service in which telephone calls these persons stated that if I did not stop by the Internal Revenue Service office I would be served with a summons and could get a \$1,000 fine and a year in jail if I disobeyed the summons.

6. That when I was interviewed by Mr. Black for the preparation of my income tax returns, Mr. Black told me what legal deductions were available to me and has never suggested to me that I claim deductions I was not entitled to.

7. In May of 1974 I received a letter from the Internal Revenue Service ordering me to appear for an interview concerning my 1973 federal income tax return. I took this letter to R.L. Black and signed a power of attorney authorizing Mr. Black to represent me.

Bertha Davis

Sworn to before me this

____ day of _____, 1974.

EXHIBIT J - AFFIDAVIT JAMES BURKS

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

CIVIL NO. 74C 1007

R. L. Black, et al.,

Plaintiffs

vs.

United States of America, et al.,

Defendants.

AFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) s. s. :
COUNTY OF NEW YORK)

I, James Burks of 101 East Milton Street, Freeport, New York,
being duly sworn depose and say:

1. That my wife, Beatrice Burks and I are plaintiffs in the case of
R. L. Black, et al., vs. the United States of America, et al.
2. That on February 19, 1973, and February 18, 1974, I went to
R. L. Black Income Tax Service to have my federal income tax returns
prepared for the years 1972 and 1973.
2. That sometime in the middle of March, 1974, two men visited
my home while I was at work, and they indicated to my housekeeper that
they wanted to talk with me. I arrived at home that evening at 7:30 p. m.

and the two men who indicated that they were from the Internal Revenue Service arrived at 8:15 p. m.

4. That the agents asked to see the refrigerator which I had claimed as a deduction on my tax return and I showed them same.

5. That I was then asked how I had become acquainted with the R. L. Black Income Tax Service and I said that it was through passing his office on my way to Lodge meetings.

6. That I was then told that the Internal Revenue Service was not investigating me, but rather was conducting an investigation on R.L. Black.

7. That I was then asked for my home telephone number in the event that the agents had any further questions to ask me.

8. That I was told that my refund may be withheld until the investigation of Mr. Black was completed.

9. That in May of 1974 my wife and I received a communication from the Internal Revenue Service scheduling us for an audit of our 1973 tax return at the Internal Revenue Service's Brooklyn office. This letter requested us to furnish proof that my wife was legally blind.

10. That to date we have not received our refund for 1973.

JAMES BURKS

Sworn to before me this

_____ day of _____, 1974.

EXHIBIT K - AFFIDAVIT OF ADA SMITH

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

CIVIL NO. 74C 1007

-----X
R. L. Black, et al.,

Plaintiffs,

vs.

United States of America, et al.,

Defendants.
-----X

AFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) s.s.:
COUNTY OF NEW YORK)

I, Ada Smith of 71-15 Beach Channel Drive, Apt. 4-R, Queens,
New York, being duly sworn under penalty of perjury, depose and say:

1. That I am a plaintiff in the case of R. L. Black, et al.,
vs. the United States of America, et al.
2. That on March 7, 1972, January 31, 1973 and March 21, 1974 I
went to R. L. Black Income Tax Service to have my 1971, 1972 and 1973
tax returns prepared.
3. That at about 9:15 p.m. in March of 1972 two men came to my
home and advised me that they were agents from the Internal Revenue
Service.
4. That the agents asked me if I was Ada Smith and when I responded

in the affirmative they indicated that they wanted to ask me some questions.

5. That the agents stated that I was not under investigation, but that R. L. Black was under investigation by the Internal Revenue Service.

6. That the agents asked me whether I was present while my tax returns were being prepared by R. L. Black or whether I gave Mr. Black my tax information and returned when the forms were completed. I told the agents that I was present while my tax returns were prepared.

7. That when the agents asked me whether R. L. Black had told me what deductions to claim and I responded that Mr. Black indicated to me what could and what could not properly be claimed as deductions, the agents stated that I was only getting myself into trouble by trying to protect R. L. Black.

8. That the agents told me that I should tell the truth because the Internal Revenue Service would give me a summons ordering my appearance in Brooklyn and they told me that if R. L. Black told me what to deduct that I should "tell them now." I answered that Mr. Black did not suggest to me that I should take deductions to which I was not entitled.

9. That I was then given a summons and order to appear at the Internal Revenue Service office in Brooklyn on March 14, 1974.

10. That when I appeared at the March 14, 1974 meeting I was again questioned as to whether or not Mr. Black had told me what to deduct on my return and I once again answered that he did not tell me what to deduct.

11. That the agents who was questioning me then stated that he had been in this business for over thirty years and he knew when a person was not telling the truth. He said that according to my income my expenses were more then they should be.

12. That the agent then stated, "I see Mr. Black has coached you well." To which remark I responded that Mr. Black had not told me anything.

13. That the agent then said that he was going to write a notice on my records indicating that I be audited.

14. That in June of 1974 I received a letter from the Internal Revenue Service ordering me to appear for an audit of my tax return for 1973. I gave the letter to Mr. Black and signed a power of attorney authorizing Mr. Black to represent me.

15. That in my interviews with Mr. Black he has informed me as to what legal deductions I was entitled to and I told him what expenses I had incurred. Mr. Black has never advised me to claim deductions to which I was not entitled.

Ada Smith

Sworn to before me this

_____ day of _____, 1974.

EXHIBIT L - AFFIDAVIT OF FRANCES CAMPBELL
IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

54a.

CIVIL NO. 74C 71007
-----X

R. L. Black, et al.,

Plaintiffs

vs.

United States of America, et al.,

Defendants.
-----X

AFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) s. s. :
COUNTY OF NEW YORK)

I, Frances Campbell of 51-32 Beach Channel Drive, Apt. 3B, Far Rockaway, New York, being duly sworn, depose and say:

1. That R. L. Black Income Tax Service has prepared my federal tax returns for the years 1971, 1972 and 1973.
2. That during the later part of February, 1974, between 8:00 and 8:30 p.m. I received a telephone call from two men who indicated that they were Internal Revenue Service agents who had knocked on my door earlier but had gotten no response and wanted to visit my house to ask me some questions. I said that would be fine.
3. That a short time later the Internal Revenue Service agents knocked on my door, identified themselves by showing me their Internal Revenue Services badges and I let them inside my home.
4. That one agent showed me a picture of R. L. Black and asked me if I knew this man. I said that I did. The agent said that Mr. Black is under investigation by the Internal Revenue Service.

5. That the agent showed me a copy of a 1973 tax return and asked me if I recognized it as the return prepared for me by R. L. Black. I stated that it looked like my return. The agent asked me whether Mr. Black estimated these expenses for me or if I told him what expenses I incurred. I responded that I told Mr. Black what expenses I incurred.

6. That the agent asked me if I had receipts that I could show them; I showed them the receipts they requested. I was asked how I became acquainted with Mr. Black and if I knew the names of any other clients of R. L. Black. I said that someone had told me about R. L. Black Income Tax Service but I refused to answer questions regarding the names of other clients of Mr. Black.

7. That an agent then stated that he thought \$36.00 per week for child care was excessive.

8. That I received my federal tax refund from R. L. Black on March 30, 1974. In July, 1974, I received a letter from the Internal Revenue Service scheduling me for an appearance in Brooklyn for an audit of my return.

Frances Campbell

Sworn to before me this

_____ day of _____, 1974

EXHIBIT M - AFFIDAVIT OF PAUL BURKE

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

CIVIL NO. 74C 1007

-----X
R. L. Black, et al.,

Plaintiffs,

vs.

United States of America, et al.,

Defendants.
-----XAFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTIONSTATE OF NEW YORK)
) s. s. :
COUNTY OF NEW YORK)

I, Paul Burke of 340 Dumont Avenue, Apt. 6G, Brooklyn, New York
being duly sworn, depose and say:

1. That on April 18, 1974 I went to R. L. Black Income Tax Service
at 200-03 Linden Boulevard, St. Albans, New York for assistance in the
preparation of my 1973 federal income tax return.

2. That on that date I gave Mr. Black all of the documentation
necessary to prepare my tax return (short form 1040A) on which I claimed
only myself as a dependent and on which I took the standard deduction.

3. On April 18, 1974 I mailed my federal income tax return to the
Internal Revenue Service indicating on the form that the refund due to me
was to be sent c/o Mr. Black at Mr. Black's place of business.

4. That on July 5, 1974 I had not received my refund and thus on
that date filed a claim for the refund on Form 843.

57a

5. That to date, I have not received my refund for my 1973 tax return overpayment.

Paul Burke

Sworn to before me this

 day of , 1974.

EXHIBIT N - AFFIDAVIT OF R.L. BLACK

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK

CIVIL NO. 74C 1007

-----X
R. L. Black, et al.,

Plaintiffs,

vs.

United States of America, et al.,

Defendants.
-----X

AFFIDAVIT IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) s. s.:
COUNTY OF NEW YORK)

I, R. L. Black, of 201-10 Linden Boulevard, St. Albans, New York,
being duly sworn depose and say:

1. That I am a plaintiff in the case of R.L. Black, et al., vs. the
United States of America, et al.

2. That I am the owner and sole proprietor of R.L. Black Income
Tax Service. My business entails preparation of income tax returns and
performance of other income tax services for the general public. My
business has been in existence since 1971 and my present clients total
approximately 560 people of which approximately 558 are black.

3. That the initial interview of one of my clients usually entails
one hour to one and a half hours of in-depth questioning in an attempt to
ascertain the deductions and exemptions to which the client is legally
entitled. I have never advised my clients to claim deductions which they
cannot corroborate. My fee begins at \$20 for a short 1040A form and

begins at \$30 for a long form 1040. Since many clients do not have the funds to pay my fee immediately, I have adopted the policy whereby refunds are mailed directly to my office and my fee is deducted from same.

4. In February of this year my clients began notifying me that they were being visited at their homes and places of business by Internal Revenue Service agents; many clients received summons and letters scheduling them for appointments at the Internal Revenue Service office in Brooklyn. To date I am aware that 120 of my clients have been called for an audit and I have reason to believe that others have been audited but have not notified me. I am aware of approximately 85 clients who have been interrogated at their homes and places of business concerning deductions they claimed on their returns and of approximately 6 clients who have received summonses ordering their appearance with documents supporting their tax returns at the Internal Revenue Service office. Out of 560 clients, to date, approximately 120 have had their refunds withheld during the investigation.

5. That toward the end of June, 1974, I received a letter from the Internal Revenue Service advising me that the tax returns prepared by me and selected for audit were under a special joint investigation with the Intelligence Division at the Brooklyn Internal Revenue Service office.

6. That I personally have no objection to an investigation of my business as I have done nothing wrong and I am perfectly willing to cooperate with the Internal Revenue Service in this respect. However, the Internal Revenue Service, by summoning and interrogating my clients, by repeatedly visiting them at their places of business and homes, by auditing them, by scheduling appointment in Brooklyn when the clients live in Queens and Jamaica, by withholding refunds and by telling my clients

that I am under criminal investigation, is intimidating my clients from using my services. As an example of the harrassment of my clients, Mr. and Mrs. Furman and Mignonne Rentz, who live in South Ozone Park, were interrogated twice at their homes by Internal Revenue Service agents, summoned to Brooklyn and then recalled to Brooklyn for an audit. Furthermore, the Rentz were told that I was under criminal investigation and it therefore would not be surprising if they sought help elsewhere with the preparation of next year's returns.

7. That I believe that the Internal Revenue Service is attempting to bring about the destruction of my business because of the race and color of myself and my clients; on June 19, 1974 Mr. Leo Liverwitz, an Internal Revenue Service agent, asked me if I had any white clients. Mr. Liverwitz also stated that the Internal Revenue Service was going to continue to investigate me and my clients "until we hear what we want to hear."

8. That my clients are frightened of the Internal Revenue Service and are blaming the harrassment they are receiving on the fact that they utilized by service.

That unless the Internal Revenue Service is enjoined from harrassing and intimidating my clients, my business will be irreparably ruined.

R. L. Black

Sworn to before me this

_____ day of _____, 1974.

61a

EXHIBIT O - CARD OF FRANK M. PERNIOLA


	DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE
	INTELLIGENCE DIVISION
FRANK M. PERNIOLA SPECIAL AGENT	
P. O. BOX 100, S. P. O. BROOKLYN, NEW YORK 11202	
9:00 - 5:00	<u>212-896-3031</u>

EXHIBIT P - LETTER FROM IRS TO R.L. BLACK

62a

Address any reply to: 26 Federal Plaza, New York, N.Y. 10017

U.S. Treasury Department

Regional Counsel

Internal Revenue Service

North Atlantic Region

Date:

AUG 28 1974

In reply refer to:

CC:NY-CT-190-74/TJK

Exhibit "P"

Mr. Raymond L. Black
d/b/a R.L. Black Income Tax Service
200-03 Linden Boulevard
St. Albans, New York 11412

Dear Mr. Black:

This office has under consideration a recommendation that criminal proceedings be instituted against you for alleged violations of the Internal Revenue laws with respect to the preparation of income tax returns for others for the years 1972 and 1973. It is anticipated that we will reach a conclusion in this matter in the next few weeks. However, if you desire a conference prior to our reaching a conclusion, it is requested that you advise us not later than Thursday, September 12, 1974, so that a conference may be promptly held. If we do not hear from you by this date we will assume that you do not desire a conference. Your reply should be directed to the attention of Mr. Theodore J. Kletnick, the attorney in charge of this case in this office. His phone number is (212) 264-0255.

You are entitled to be represented at any such conference by your attorney, your accountant, or your agent. You may also appear in person without a representative, or be accompanied by your attorney or other representative. If your representative is a qualified attorney or qualified certified public accountant, he must file the applicable written declaration described in paragraph (b) (1) (i), or (ii) of 26 CFR 601.502 in order to be recognized to practice before the Service. Form 2848-D or its equivalent may be used for this purpose. All other representatives enrolled as agents should present a valid enrollment card and file form 2848-D or a similar document.

Very truly yours,

LEWIS J. ABRAMMS
Acting Staff Assistant
to the Regional Counsel

By:

Theodore J. Kletnick
THEODORE J. KLETNICK

TJKletnick:dc

The undersigned, an attorney admitted to practice in the courts of New York State,

63a

Check Applicable Box
☐ Certification
By Attorney
☐ Attorney's
Affirmation

certifies that the within
has been compared by the undersigned with the original and found to be a true and complete copy.
shows: deponent is

the attorney(s) of record for
in the within action; deponent has read the foregoing
and knows the contents thereof; the same is
true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief,
and that as to those matters deponent believes it to be true. This verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

ss:

Check Applicable Box
☐ Individual
Verification
☐ Corporate
Verification

the
the foregoing
deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as
to those matters deponent believes it to be true.
the
of
a
corporation,
in the within action; deponent has read the
and knows the contents thereof; and the same
is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and
belief, and as to those matters deponent believes it to be true. This verification is made by deponent because
is a corporation and deponent is an officer thereof.

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me on

19

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF New York

ss:

David W. Lee being duly sworn, deposes and says: deponent is not a party to the action.
is over 18 years of age and resides at 647 W. 207th St., N. Y., N. Y. 10034

Check Applicable Box
☒ Affidavit
of Service
By Mail
☐ Affidavit
of Personal
Service

On Sept. 13, 19 74 deponent served the within Notice of Motion, Motion & Memo
upon George H. Weller
attorney(s) for defendants in this action, at 225 Cadman Plaza East, Brooklyn, N. Y.
the address designated by said attorney(s) for that purpose
by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in -- a post office -- official
depository under the exclusive care and custody of the United States Postal Service within the State of New York.

On 19 at upon

herein, by delivering a true copy thereof to h personally. Deponent knew the
person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me on September 13, 19 74

The name signed must be printed beneath

David W. Lee

THOMAS HOFFMAN
NOTARY PUBLIC, STATE OF NEW YORK
Exp. 12-31-1975
Queens County, New York
Commission Expires March 30, 1975

NOTICE OF MOTION

64a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

R. L. BLACK, et al.,

Plaintiffs,

-against-

UNITED STATES OF AMERICA, et al.,

Defendants.

----- x

NOTICE OF MOTION

Civil Action
No. 74 C 1007

S I R S :

PLEASE TAKE NOTICE that the attached MOTION TO
DISMISS will be brought on before the HONORABLE ANTHONY J.
TRAVIA in Courtroom Number 9, Sixth Floor, United States
Courthouse, 225 Cadman Plaza East, Brooklyn, New York
11201, at 10:00 A.M. EDT on ^{Friday} ~~Thursday~~, October ²⁵ ~~24~~, 1974, or
as soon thereafter as counsel can be heard.

Dated: Brooklyn, New York
October 1, 1974

Yours, etc.,

DAVID G. TRAGER
United States Attorney
Eastern District of New York
Attorney for Defendants
225 Cadman Plaza East
Brooklyn, New York 11201
(212) 596-5700

By: 

GEORGE H. WELLER

Assistant United States Attorney

OF COUNSEL

JOHN R. TJADEN, ESQ.
Trial Attorney, Tax Division
U. S. Department of Justice
Washington, D. C. 20530
Telephone (202)-739-3398

TO: THOMAS HOFFMAN, ESQ.
Attorney for Plaintiffs
200 West 57th Street
New York, New York 10019

MOTION TO DISMISS ORIGINAL COMPLAINT AND AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT NEW YORK

-----x

R.L. BLACK, ET AL., :

Plaintiffs :

v. :

CIVIL ACTION NO. 74 C 10007

UNITED STATES OF AMERICA, :
ET AL., :

MOTION TO DISMISS ORIGINAL COMPLAINT
AND AMENDED COMPLAINT

Defendants
-----x

Come now the defendants, United States of America, William E. Simon, Secretary of the Treasury; Donald Alexander, Commissioner, Internal Revenue Service, Brooklyn District; and other unknown agents of the Internal Revenue Service, by David G. Trager, United States Attorney for the Eastern District of New York, and move this Court for an order dismissing the original Complaint and the Amended Complaint against them, and as grounds for this Motion say:

1. That this Court lacks jurisdiction over the defendants.
2. That this Court lacks jurisdiction over the United States, as the United States has not waived its sovereign immunity to be used in this action.
3. That this Court lacks jurisdiction over the subject matter of this suit.
4. That the Complaint of the plaintiffs fails to state a claim upon which relief can be granted.

DAVID G. TRAGER

United States Attorney

By: 

GEORGE H. WELLER

Assistant United States Attorney

OF COUNSEL

JOHN R. TJADEN, ESQ.
Trial Attorney, Tax Division
U. S. Department of Justice
Washington, D. C. 20530
Telephone (202)-739-3398

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT NEW YORK

-----X

R.L. BLACK, ET AL.,	:	
Plaintiffs	:	
v.	:	CIVIL ACTION NO. 74 C 10007
UNITED STATES OF AMERICA,	:	<u>MEMORANDUM IN SUPPORT</u>
ET AL.,	:	<u>OF MOTION TO DISMISS</u>
Defendants	:	

-----X

The plaintiffs have named the United States of America and several of its agents as defendants in their Complaint, and in their Amended Complaint in which they request the issuance of a preliminary injunction. It has been clearly established that governmental officials acting within the scope of their authority have an absolute privilege and immunity from suits being filed against them which arose out of the performance of their duties. Barr v. Matteo, 360 U.S. 564 (1959); David v. Cohen, 407 F. 2d 1268, 1271 (C.A. D.C., 1969); Bridges v. Internal Revenue Service, 433 F. 2d 299 (C.A. 5, 1970); Bershad v. Wood, 290 F. 2d 714 (C.A. 9, 1961). Since the individual defendants are sued in their official capacities and there is no allegation of facts to show that they have acted outside of their official authority, this action cannot lie against them.

Moreover, this Court lacks jurisdiction over the United States itself. It is fundamental that as a sovereign, the United States of America cannot be sued, except when by statute the Congress of the United States has waived its sovereign immunity and permitted it to be sued. In the absence of such a specific statute that can be relied upon in which Congress

expressly waives its sovereign immunity, a Court has no jurisdiction over the United States. United States v. Alabama, 313 U.S. 274 (1941); United States v. Shaw, 309 U.S. 495 (1940); Malone v. Bowdoin, 369 U.S. 643 (1962); Larson v. Domestic & Foreign Corporation, 337 U.S. 682 (1949); Minnesota v. United States, 305 U.S. 382 (1939). The statute cited by the plaintiffs in their Complaint as a basis for jurisdiction over the United States is the Federal Tort Claims Act, 28 U.S.C. Section 2671 et seq. Although the plaintiffs assert that this action has been brought within the scope of that Act, Section 2680(c) of Title 28 specifically excepts "any claim arising in respect of the assessment or collection of any tax or customs duty, . . ." Accordingly, it is clear that Congress acted with certainty and definitiveness in excluding claims arising out of the assessment or collection of taxes from the Federal Tort Claims Act.

Furthermore, it is apparent that the plaintiffs have not complied with the jurisdictional prerequisites of that Act. 28 U.S.C. Section 2675(c) provides that an action may not be instituted against the United States for money damages unless the claimant has first presented the claim to the appropriate federal agency and his claim has been finally denied by that agency. The absence of this prerequisite would also preclude jurisdiction to entertain this action against the United States.

The plaintiffs also assert that 28 U.S.C. Section 2201 is the appropriate statute giving the Court authority to grant a declaratory judgment in the instant suit. In reality, however, such an action is expressly prohibited by Section 2201, which makes provisions for suits involving declaratory judgment in appropriate cases, but specifically excepts cases "with respect to federal taxes." Since the plaintiff's purpose in the present action is one "with respect to federal taxes," it is prohibited by 28 U.S.C. Section 2201.

It is also evident that the plaintiffs are not entitled to the compulsory injunctive relief that they seek, inasmuch as they are attempting to enjoin the assessment and collection of taxes. Section 7421(a) of the Internal Revenue Code of 1954, 26 U.S.C. Section 7421(a), provides in relevant part that:

No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any Court by any person . . .

Since the plaintiffs are attempting to restrain the defendants in their tax collection efforts, there is no jurisdiction to grant the injunctive relief that has been requested.

Finally, it is submitted that the plaintiffs may not maintain a class action suit against the defendants until they have shown that they have fully complied with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure. In this regard, the plaintiffs are required to show that all members of the class which they seek to represent have been notified of the pendency of this action. The United States Supreme Court has recently ruled on this pre-condition in Eisen v. Carlisle and Jacquelin, 42 L.W. 4804, 4809 (May 28, 1974). There, the Court stated:

Rule 23(c)(2) provides that in any class action contained under subdivision (b)(3), each class member shall be advised that he has the right to exclude himself from the action on request or to enter an appearance through counsel, and further that the judgment whether favorable or not, will bind all class members not requesting exclusion. To this end, the Court is required to direct to each class member 'the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.' We think the import of this language is unmistakable. Individual notice must be sent to all members whose names and addresses may be ascertained through reasonable effort.

5/24/74

5/16/74 would be meaningful

The Court went on to state in Eisen, that since the names and addresses of approximately 2,250,000 class members were easily ascertainable, the plaintiff was required to give these class members notice of the pendency of the suit. In this regard, the Court also noted that "individual notice is not a discretionary consideration to be waived in a particular case." 42 L.W. 4804, supra, at p. 4810. Since in the present case all class members are clients of plaintiff, R.L. Black and are relatively few in number, he has means readily available by which he can notify each class member of the pendency of the suit. Until this condition is complied with, the Court may not entertain this suit as a class action.

CONCLUSION

For the foregoing reasons, it is therefore respectfully submitted that the motion to dismiss the plaintiff's Complaint should be granted.

DAVID G. TRAGER
United States Attorney

JOHN R. TJADEN, ESQ.
Trial Attorney
United States Department
of Justice
(Of Counsel)

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the ____ day of _____, 19____, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York,

_____, 19____

United States Attorney,
Attorney for _____

To:

Attorney for _____

SIR:

PLEASE TAKE NOTICE that the within is a true copy of _____ duly entered herein on the ____ day of _____, in the office of the Clerk of the U. S. District Court for the Eastern District of New York.

Dated: Brooklyn, New York,

_____, 19____

United States Attorney,
Attorney for _____

To:

Attorney for _____

Civil Action

No. 74 C 1007

UNITED STATES DISTRICT COURT
Eastern District of New York

R. L. BLACK, et al.,

Plaintiffs,

—Against—

UNITED STATES OF AMERICA,
et al.,

Defendants.

NOTICE OF MOTION, MOTION, and
MEMORANDUM IN SUPPORT OF MOTION

DAVID G. TRAGER

United States Attorney, EDNY
Attorney for Defendants
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within _____
_____ is hereby admitted.

Dated: _____, 19____

Attorney for _____

FD-11-C-5N-8-73-7333

GEORGE H. WELLER
Assistant U. S. Attorney
596-3840/3841

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X
R. L. BLACK, et al.,

Plaintiffs, : 74 C 1007

VS. :

UNITED STATES OF AMERICA, et al.,

: MEMORANDUM IN
: OPPOSITION TO
: DEFENDANTS' MOTION
: TO DISMISS

Defendants. :
-----X

PRELIMINARY STATEMENT

This is a memorandum submitted in opposition to defendants' Notice of Motion to Dismiss dated October 1, 1974. Said Motion to Dismiss is sought on the grounds that the Court has no jurisdiction over the defendants, the United States, and the subject matter of the suit and that plaintiffs' Complaint fails to state a claim upon which relief can be granted.

PROPOSITION I

THE COURT HAS JURISDICTION OVER THE
DEFENDANTS AND THE SUBJECT MATTER
OF THIS ACTION

Defendants assert that they are protected by the concept of sovereign immunity and claim that plaintiffs have made no allegation of facts to show that defendants have acted outside their official authority. Plaintiffs contend that the allegations in their complaint of numerous statutory and constitutional violations by defendants are more than adequate for the purpose of showing defendants acted outside the scope of their authority. Pleadings are to be liberally construed so as to do substantial justice. Rule 8, Federal Rules of Civil Procedure; Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S.Ct. 948, 31 L.Ed2d 988 (1959). A mere allegation that defendants' actions violated statutory and constitutional

prohibitions should suffice to remove defendants from the shield of sovereignty. As was stated by the United States Supreme Court in Larsen v. Domestic and Foreign Commerce Corp., 337 U.S. 682, 69 S.Ct.

457, 93 L.Ed2d 1628 (1949):

"...where the officer's powers are limited by statute, his actions beyond those limitations are considered individual and not sovereign actions. The officer is not doing the business which the sovereign has empowered him to do or he is doing it in a way which the sovereign has forbidden. His actions are ultra vires his authority and therefore may be made the object of specific relief."

If defendants have violated the prohibition of 26 USC 7506(b) by subjecting the plaintiffs to "unnecessary examinations or investigations", the doctrine of sovereign immunity will not bar a suit to restrain this unlawful conduct. DeMasters v. Arends, 313 F.2d 79 (9th Cir. 1963). Plaintiffs' claim that defendants have infringed upon rights guaranteed by 42 USC §1981 also will remove the defense of sovereign immunity. Penn v. Schlesinger, 490 F.2d 700 (5th Cir. 1973) held that since §1981 prohibits racial discrimination in the making and enforcing of employment contracts, the federal officials responsible for the decisions which resulted in the discrimination were not acting within the scope of their duties on behalf of the sovereign. Plaintiffs in the present case have alleged that defendants engaged in racially discriminatory conduct in their investigation and enforcement of the Internal Revenue Code. Such conduct is clearly violative of 42 USC §1981, which guarantees that blacks be given "the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens."

42 USC §§1981 and 1982 comprise the Civil Rights Act of 1866.

Jones v. Mayer, 392 US 409, 88 S.Ct. 2186, 20 L.Ed2d 1189 (1968),

Waters v. Wisconsin Steel Workers of International Harvester Co., 427 F.2d 476, 482 (7th Cir. 1970). Since these sections are based upon the Thirteenth Amendment, they abolish discrimination based on race in all sectors, private as well as public, federal as well as state. District of Columbia v. Carter, 409 US 418, 34 L. Ed2d 613, 93 S. Ct. 602 (1973); Penn v. Schlesinger, supra. Therefore, discriminatory treatment of black citizens at the hands of the Internal Revenue Service is outside the scope of their duties on behalf of the sovereign, and defendants are not protected by sovereign immunity.

Defendants also claim that 26 USC §7421 and the Declaratory Judgment Act, 28 USC §§2201 and 2202 deny this court jurisdiction to enjoin the IRS. However, the purpose of these statutes was to prevent suits by taxpayers to contest the tax which had been assessed and to bar the collection of that tax by levy and distraint. 26 USC §6331; Logan Planning Mill Co., v. Fidelity and Casualty Company of New York, 212 F. Supp. 906 (D.C.W. Va. 1962); Enochs v. Williams Packing and Navigation Co., 370 U.S. 1, 82 S. Ct. 1125, 8 L. Ed2d 292 (1962); McGlotten v. Connally, 338 F. Supp. 448 (D.C.D.C. 1972). Here the defendants are engaging in a criminal investigation of plaintiff R.L. Black and harrassing his clients by issuing illegal summons, abusive examinations, unreasonable and burdensome interviews, abusive audits and repetitive visitations. In DeMasters v. Arends, supra, the federal court in accepting jurisdiction rejected IRS assertion that 28 USC §2201 and 26 USC §7421(a) barred a plaintiff from instituting an action for an injunction against the IRS for "unnecessary examination and investigation."

Courts have repeatedly enjoined the Secretary of Treasury and the Internal Revenue Service when they have acted in violation of the

Constitution or of federal statutes. Eastern Kentucky Welfare Rights Organization v. Shultz, 370 F.Supp. 325 (D. C. D. C. 1973) (injunction and declaratory judgment granted against the Secretary of Treasury and the Commissioner of the IRS invalidating a revenue ruling allowing private nonprofit hospital to qualify as charitable institutions under the Internal Revenue Code without requiring them to admit and provide free or reduced rate services to persons unable to pay); McGlotten v. Connally, supra, (three judge court declaring tax advantages granted to a fraternal order; which denied membership to non-whites to be unconstitutional and restraining the Secretary of Treasury from granting such); National Milk Producers v. Shultz, 372 F.Supp. 745 (D. C. D. C. 1974) (ordering Secretary of Treasury to comply with the requirements of a tariff statute). This practice has been unanimously upheld by the United States Supreme Court. Green v. Connally, 330 F.Supp. 1150 (D. C. D. C. 1971), affd. Cott v. Green, 404 U.S. 997, S. Ct. 564, 30 L. Ed2d 550 (1971) (injunction granted against Secretary of Treasurer and Commissioner of the IRS restraining them from approving any application for a tax exempt status for any private school in Mississippi engaging in racial discrimination).

Plaintiffs have alleged numerous statutes which give this court jurisdiction of this action and over the defendants: 28 USC §1331 (jurisdiction for all controversies arising under the Constitution and federal laws); 28 USC §1340 (providing federal district courts with jurisdiction of "any civil action arising under any Act of Congress providing for internal revenue..."), see DeMaster v. Arends, supra, U.S. v. Coson, 286 F.2d 453 (9th Cir. 1961), Eastern Kentucky Welfare Rights Organization v. Shultz, supra; 28 USC §1343(4) (providing jurisdiction to recover damages or to secure equitable or other relief

under any Act of Congress providing for the protection of civil rights", i.e., 42 USC §1981; 28 USC §1361 (granting jurisdiction to compel federal officers or employees to perform a duty owed to plaintiff).

PROPOSITION II

PLAINTIFFS HAVE ALLEGED FACTS SUFFICIENT TO STATE A CLAIM

As was noted earlier, plaintiffs, in alleging that defendants are acting in a discriminatory manner based on the race and color of the plaintiffs, have stated a claim under 42 USC §1981 and the Thirteenth Amendment. Jones v. Mayer, supra, District of Columbia v. Carter, supra, Penn v. Schlesinger, supra, Waters v. Wisconsin Steel Workers of International Harvester Co., supra; Young v. International Telephone and Telegraph, 438 F.2d 757 (3rd Cir. 1971); Sanders v. Dobbs House, Inc. (5th Cir. 1970), Brady v. Bristol-Meyers, 459 F.2d 621 (8th Cir. 1972).

In addition, the unequal application of a valid law based on race or color constitutes discrimination prohibited by the constitution. Yick Wo v. Hopkins, 118 US 356, 6S.Ct. 1064, 30 L.Ed2d 220 (1886). This proscription applies to the federal government by virtue of the Fifth Amendment. Bolling v. Sharpe, 347 US 497, 74 S.Ct. 693, 98 L.Ed2d 884 (1954).

Plaintiffs have also stated a claim due to their allegation that their Fourth Amendment rights have been violated by federal agents. Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 US 388, 29 L.Ed2d 619, 91 S.Ct. 1999 (1971) gave plaintiff a cause of action based upon the Fourth Amendment for an unlawful search by Federal narcotic agents. This principle has recently been reaffirmed by the Supreme Court. U.S. v. Calandra __ US __, 38 L.Ed2d 561, __ S.Ct. __ (1974) (opinion by Mr. Justice Powell).

As was stated earlier, 28 USC §§1331, 1340 and 1343 grants the court jurisdiction to hear plaintiffs other claims based upon other violations of the Constitution and federal statutes; denial of plaintiff R.L. Black's liberty and property without due process, the violations of 26 USC §7605(b); the abuse of the summons; audit and refund statutes by the IRS; the taking of plaintiff Black's property without just compensation and the defamation of plaintiff Black's business reputation.

PROPOSITION III

THE ACTION IS PROPERLY MAINTAINED AS A CLASS ACTION

Plaintiffs are not required to notify all members of the class of the pendency of the action until the Court so directs. Rule 23(c)(2), Federal Rules of Civil Procedure. In any event, notice to the members of the class is not required under Eisen v. Carlisle and Jacquelin, ___ U.S. ___, 40 L.Ed2d 732, ___ S.Ct. ___ (1974) and Rule 23(c)(2) unless and until "the court finds that the questions of laws and fact common to the members of the class predominate over any question affecting only individual members...". Rule 23(b)(3), Federal Rules of Civil Procedure. Plaintiffs respectfully submit that the Complaint reveals that the claims of plaintiff R.L. Black predominate over the claims of other plaintiffs and members of the class and notice is therefore not required.

PROPOSITION IV

28 USC §2675 IS NOT APPLICABLE IN ACTIONS FOR INJUNCTIVE RELIEF

Plaintiffs at this time only seek injunctive relief. Therefore the applicability of 28 USC §2675 is not relevant as to the question of whether the defendants should be restrained from ruining plaintiff R.L. Black's business without due process of law and whether defendants should also be restrained from continuing the abusive and unreasonable pattern of

conduct by defendants against plaintiff Black and his clients.

The Court should note that a Notice of Claim was submitted to Donald C. Alexander, Commissioner of the Internal Revenue Service on July 10, 1974.

CONCLUSION

For the reasons stated, this Court should deny defendants' Motion to Dismiss in all respects.

Respectfully submitted,

Dated: New York, New York
October 23, 1974

Thomas Hoffman
Attorney for plaintiffs
200 West 57th Street
New York, New York 10019
(212) 581-1180

David W. Lee
Attorney for plaintiffs
200 West 57th Street
New York, New York 10019
(212) 581-1180

ANTI-INJUNCTION STATUTE, 26 U.S.C. §7421

26 U.S.C. § 7421. Prohibition of suits to restrain assessment or collection

"(a) Tax. -- Except as provided in sections 6212(a) and (c), 6213(a), and 7426(a) and (b) (1), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

(b) Liability of transferee or fiduciary. --No suit shall be maintained in any court for the purpose of restraining the assessment or collection (pursuant to the provisions of chapter 71) of --

(1) the amount of the liability, at law or in equity, of a transferee of property of a taxpayer in respect of any internal revenue tax, or

(2) the amount of the liability of a fiduciary under section 3467 of the Revised Statutes (31 U.S.C. 192) in respect of any such tax."

cc R.L. BLACK 2/13/75

MEMORANDUM AND ORDER (Filed February 10, 1975)

79a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
R. L. BLACK, et al.,

Plaintiffs,

74 C 1007

-----X
UNITED STATES OF AMERICA,
et al.,

Defendants..
-----X

MEMORANDUM
AND
ORDER

APPEARANCES:

THOMAS HOFFMAN, ESQ.
Attorney for Plaintiffs

DAVID G. TRAGER, ESQ.
United States Attorney,
Eastern District of New York
Attorney for Defendants
By JOHN R. TJADEN, ESQ.,
Tax Division
U. S. Department of Justice
and
GEORGE WELLER, ESQ.
Assistant U. S. Attorney

NEAHER, District Judge.

This case is before the court on plaintiffs' motion for a preliminary injunction, F.R.Civ.P. 65, and on defendants' motion to dismiss the original complaint and

amended complaint for lack of jurisdiction over the defendants or over the subject matter of the action, F.R.Civ.P. 12(b)(2) and (1), and for failure to state a claim upon which relief can be granted, F.R.Civ.P. 12(b)(6).

Plaintiffs in this alleged class action are R. L. Black ("Black"), the sole proprietor of an income tax preparation service, and a number of his clients suing on behalf of themselves and all others similarly situated. Defendants are the United States, the Secretary of the Treasury, the Commissioner of the Internal Revenue Service ("IRS"), the District Director of IRS in Brooklyn and "other unknown agents" of the IRS. Various forms of declaratory, injunctive and monetary relief are sought against the defendants, essentially on the claim that they are conducting an investigation of Black and of his clients' tax returns and liability in a manner violative of his and their constitutional and statutory rights and with the intent of driving Black out of business as a tax preparer.¹ The court's jurisdiction is invoked under 28 U.S.C. §§1331, 1340, 1343(4), 1346, 2201 and 2202, 2671, et seq., and 42 U.S.C. §1981.

There being no answer or answering affidavit on behalf of defendants, the facts appearing in the complaint, amended complaint and affidavits of plaintiffs supporting their motion for a preliminary injunction are taken as true for purposes of all the pending motions.

Black has been engaged in the income tax preparation business since 1971 and presently has some 560 clients. In a letter dated June 26, 1974, the IRS informed Black that a number of tax returns prepared by him for clients for tax years 1972 and 1973 were under a special joint investigation with the IRS intelligence division. By a subsequent letter dated August 28, 1974, Black was further informed that the IRS had "under consideration a recommendation that criminal proceedings be instituted against you on account of such returns." Black is a black citizen and virtually all of his clients are black, a substantial number being people of low income.

In pursuing their investigation of Black, IRS agents have made repeated visits to the homes of plaintiff clients and to their places of employment. Some 85 clients have been interrogated about their dealings with Black,

have been informed that he is under criminal investigation and have been warned that they would be called in for audits unless they cooperated in furnishing information. Clients have been told that their refund checks would be withheld pending completion of the investigation, including some who submitted short form returns claiming only standard deductions. More than 120 clients have had their refund checks withheld. More recently, almost 200 of the clients have received notice that all deductions claimed by them on their respective returns have been denied.² Summonses have been issued to clients calling for records pertaining to the tax liability of Black or for documents already in the possession of the IRS and have been made returnable in less than the 10 days provided by statute. Other clients have been informed that unless they came to the IRS office voluntarily to discuss the investigation of Black, they would receive summonses. *and be audited.*

In requesting injunctive relief, Black asserts that he does not seek to halt any investigation of his business. His complaint is directed to the alleged intimidating tactics of IRS agents in summoning and interrogating

4

his clients, repeatedly visiting them at their places of business and homes, threatening them with summonses and audits, telling them that Bleck is under criminal investigation and that any refunds due them will be withheld pending completion of the investigation. This, he contends, is a calculated plan to cause his clients to cease patronizing him and drive him out of the tax return preparation business in violation of the due process clause of the Fifth Amendment and of the Internal Revenue Code and regulations.

Defendants contend that the court is without jurisdiction to entertain such a claim. They point to the established rule that governmental officials acting within the scope of their authority have an absolute privilege and immunity from suits being filed against them which arise out of the performance of their duties. Moreover, they maintain, the court lacks jurisdiction over the United States itself, since it is fundamental that the doctrine of sovereign immunity bars such a suit unless immunity has been waived. Here, defendants maintain, not only is there no such waiver but Congress has expressly decreed that "no suit for the purpose of restraining the assessment or

collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed." 26 U.S.C. §7421(a).

Turning first to the threshold question of jurisdiction, it is manifest that this action cannot be maintained against the United States, the Secretary of the Treasury, or the Commissioner or District Director of IRS. The named officials are being sued only because they are in charge of an executive department or agency of the government on whose behalf the unknown IRS agents are performing the acts about which complaint is made. As such officials, the named defendants are absolutely immune from suit. Born v. Matteo, 360 U.S. 564 (1958); Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 456 F.2d 1339, 1342-43 (2 Cir. 1972). Nor are §§1340 and 1343 of Title 28, U.S.C., which plaintiffs invoke, a waiver of that immunity or a consent by the United States to be sued on a claim such as that presented here. De Masters v. Arend, 313 F.2d 79, 84 (9 Cir. 1963).

A further barrier to the jurisdiction of this court is the Anti-Injunction Act, 26 U.S.C. §7421(a).

previously quoted. The language of that Act, the Supreme Court recently noted, "could scarcely be more explicit" in barring suits to enjoin the IRS or to obtain declaratory relief to forestall its activities in matters related to its statutory duties. Bob Jones University v. Simon, ___ U.S. ___, 94 S.Ct. 2038 (1974); see also Alexander v. "Americans United" Inc., ___ U.S. ___, 94 S.Ct. 2053 (1974). Explaining the purposes of the Act, the Court stated:

"The Court has interpreted the principal purpose of this language to be the protection of the Government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference . . . [citations omitted]. The Court has also identified 'a collateral objective of the Act — protection of the collector from litigation pending a suit for refund.' Williams Packing, 370 U.S., at 7-8, 62 S.Ct. at 1129." Id. at 2046 (footnote omitted).

The injunctive or declaratory relief sought by plaintiffs here falls squarely within the literal prohibition of the statute. Regardless of the motivation of the IRS agents who are conducting the investigation, the interviewing of taxpayers regarding their returns, the issuance of summonses, the requiring of audits and the withholding of refunds are all matters related to the assessment and collection of taxes. The Anti-Injunction

Act removes from the court jurisdiction to intervene except as expressly provided for by Congress. The barrier is not removed by claims of denial of equal protection and due process, 42 U.S.C. §1981, et seq., and invoking the court's authority under 28 U.S.C. §1343. See Bob Jones University, supra, at 2052.

"[T]he constitutional nature of a taxpayer's claim, as distinct from its probability of success, is of no consequence under the Anti-Injunction Act." Alexander, supra, at 2058.

This is not to say that plaintiffs are left wholly without remedy. The plaintiff taxpayer clients of Black may resist compliance with an IRS summons they consider unreasonable and require the government to seek enforcement in court. The taxpayer may then be heard on his objections and the court will decide whether and to what extent the summons shall be enforced. See United States v. Theodore, 479 F.2d 749, 752 (4 Cir. 1973). If refunds have been improperly withheld, claims may be prosecuted pursuant to the statutory scheme for claiming refunds, 26 U.S.C. §7422.

As for plaintiff Black, even though the Civil Rights Act, 42 U.S.C. §1983, does not apply to federal officers, Bivens, supra, 456 F.2d at 1346, those who have

actually violated a person's constitutional rights are personally subject to suit in a federal court to recover damages provided the amount-in-controversy requirement is satisfied. Lynch v. Household Finance Corp., 405 U.S. 538, 547 (1972), 92 S.Ct. 1113, 1119. Thus Black also may have a remedy if it can be proved that the "unknown agents" of the IRS acted in bad faith and caused him damage by depriving him of rights guaranteed by the Fifth Amendment and the laws of the United States. States Marine Lines, Inc. v. Shultz, 498 F.2d 1146, 1157 (4 Cir. 1974). Here, however, the complaint states no claim of present damage, only the fear that Black may lose clients if the investigation continues unchecked.

Accordingly, plaintiffs' motion for a preliminary injunction is denied and defendants' motion to dismiss the complaint as amended is granted.

SO ORDERED.

The Clerk of the Court is directed to enter judgment in favor of the defendants and against the plaintiffs

88a

dismissing the complaint as amended.

/s/ EDWARD R. NEAHER

U. S. D. J.

Dated: Brooklyn, New York
February 7, 1975

FOOTNOTES

- ¹ Paragraph 23 of plaintiffs' complaint alleges:

"23. That upon information and belief, and by virtue of the acts of defendants and their agents and employees set forth in paragraphs 18 through 21 hereof, the defendants and their agents and employees are attempting to destroy plaintiff R.L. Black's business. On at least one occasion, an agent of the Internal Revenue Service informed plaintiff R.L. Black's clients that the Internal Revenue Service was going to 'run plaintiff R.L. Black out of business.'"

- ² Letter of plaintiffs' attorney to the court, dated January 15, 1974, enclosing copy of Form 1902-B sent to one of the clients.

NOTICE OF APPEAL (Filed March 6, 1975)

United States District Court
Eastern District of New York

-----X
R. L. Black, Ada Smith, James Burks, Beatrice
Burks, Shannon Baird, Sharon Baird, Alvin
Black, Marsha Black, Furman G. Rentz,
Mignonne Rentz, Vincent Sanford, Etheline
Sanford, Lee E. Simon, Leslie Small, Solla
Small, Roy T. Black, Gertrude Black,
Nathaniel Montgomery, Tommie Montgomery,
J. V. Black, Gennie Black, on behalf of them-
selves and on behalf of all others similarly
situated,

Plaintiff-Appellants,

vs.

United States of America, William E. Simon,
Secretary of the Treasury, Donald Alexander,
Commissioner, Internal Revenue Service,
Charles Brennan, District Director, Internal
Revenue Service, Brooklyn District, Eloisa Spruill and
other unknown agents of the Internal Revenue Service,

Defendant-Appellees.

CIV.
74 C 1007

Notice of Appeal to
The Court of Appeals
From a Judgment
of the United States
District Court for
the Eastern District
of New York

-----X
NOTICE is hereby given that the plaintiff-appellants, above-named
hereby appeal to the United States Court of Appeals for the Second Circuit
from the Judgment of the United States District Court for the Eastern
District of New York, the Honorable Edward R. Neaher presiding which
dismissed the complaint and denied plaintiff-appellants' motions for a
temporary restraining order, and preliminary injunction, and permanent
injunction.

The Judgment so described was handed down by the Honorable Edward
R. Neaher and filed with the Clerk of the United States District Court for the
Eastern District of New York on the 7th day of February, 1975.

Dated: New York, N. Y.
February 27, 1975

Respectfully submitted,

Thomas Hoffman
200 W. 57 St., N. Y. C. 10019
Attorney for Plaintiff-Appellants

In the United States Court of Appeals
For the Second Circuit

-----X
R. L. BLACK, et al.

Appellants,

-against-

AFFIDAVIT OF SERVICE

No. 75-6006

UNITED STATES OF AMERICA, et al.

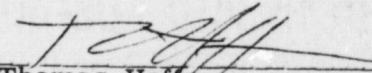
Appellees.
-----X

County of New York)

State of New York)

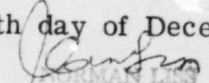
THOMAS HOFFMAN, the attorney for Appellant, being duly sworn deposes and says that on the 8th day of December, 1975, I did serve a copy of the Appellants' Brief in the above-styled matter, upon the attorney for the Appellant by mailing three (3) copies of same, first class, postage prepaid to him as follows: Scott P. Crampton, Assistant Attorney General Tax Division, United States Department of Justice, Washington, D. C. 20530.

Dated: New York, New York
December 8, 1975


Thomas Hoffman
Attorney for Appellant
200 West 57th Street
New York, New York 10019
(212) 581-1180

Sworn to before me on

this 8th day of December, 1975


Notary Public, State of New York
No. 0342378625
Qualified in Bronx County
Commission Expires March 30, 1977

